

IN THE UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

VOLUME 16A of 16B OF 20

UNITED STATES OF AMERICA

EP:13-CR-0370-DCG

v.

EL PASO, TEXAS

MARCO ANTONIO DELGADO

September 20, 2016

STATEMENT OF FACTS

CHARGE OF THE COURT

THE HONORABLE DAVID C. GUADERRAMA

UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 (Open court. Defendant and counsel present.)

2 (Jury not present.)

3 THE COURT: Let the record reflect that the jury is no
4 present, the United States through its United State's assistant
5 attorneys are present, the defendant and his counsel are
6 present.

7 MR. HANSHEW: If I may Your Honor, please?

8 Judge, we're asking, in light of yesterday, the Court
9 taking into evidence the statements of the marshal regarding
10 what occurred yesterday, that the Court additionally put into
11 evidence the video that was received from the marshals in this
12 case.

13 The record isn't reflected yesterday you had
14 statements from this marshal that, you know, indicated that
15 Mr. Delgado somehow assaulted this marshal, we believe the video
16 shows otherwise. And so that there's a clear record, an
17 appellate record in this case that the video be introduced as
18 well because we believe that it not only shows otherwise, but it
19 contradicts the statements that the marshal put into the record
20 in this case, Judge.

21 THE COURT: I'm not sure what relevance that would
22 have since the purpose for all of that was to determine whether
23 there was a voluntary absence of the defendant from trial so
24 that I could proceed to trial without him.

25 It came clear to me that that was not the case and so

1 introducing the video wouldn't add to that. My decisions
2 already been made. You're client did not voluntarily absence
3 himself.

4 MR. HANSHEW: Right. But I think that the problem --
5 the problem is that when the Court Appeals is looking at the
6 totality of a record, if the record were left as it stood
7 yesterday, it would appear that it would be unrebutted that
8 Mr. Delgado was somehow the law enforcement assaulter and we all
9 know how that can be considered in many facets of a case in a
10 trial.

11 THE COURT: I'm happy to exclude the testimony of the
12 marshal.

13 MR. HANSHEW: Well, I think it's important, as well,
14 to show in this case. I mean he perjured himself, Judge, and
15 that something, you know, that needs to be considered.

16 THE COURT: I'm not willing to make that judgment from
17 the very, very limited evidence that we received about that
18 activity.

19 MR. HANSHEW: Well he, for example --

20 THE COURT: There was -- my understanding -- I mean
21 what we saw was what happened right behind the door that comes
22 into the courtroom. And I understand there was there was, you
23 know, contact with the defendant downstairs. There's contact
24 with the defendant outside the little hallway, which is right
25 outside our door, none of which is in evidence and so if we're

1 going to make a judgment like that, we'd have to have a full
2 blown hearing where all of that evidence would come in. And so
3 I'm going to deny your request.

4 MR. HANSHEW: Well, Judge, and if I can just -- not
5 only did the video show that the statements he described about
6 what happened back there weren't true as he stated, additionally
7 we know through an absolute certainty that there is no
8 subjectivity in the statement he made that Mr. Delgado was the
9 one that asked to go to the hospital. I mean that's how he
10 closed out his testimony yesterday. And we heard from, you
11 heard from the number two in charge of the marshals here. You
12 heard from counsel that was present and you heard from the EMS
13 that that was absolutely false. We know that --

14 THE COURT: I'd have to disagree with that as well,
15 Because the EMS guy said the defendant is the one that decides
16 whether he goes to the hospital or not. That was clear.

17 Now, the EMS guy did suggest to the defendant that he
18 should go to the defendant. The defendant, his primary
19 inclination wasn't to go to the hospital, it was to speak to his
20 counsel. And so looking through the lens of determining whether
21 there was a voluntary absence, to me that would show that that
22 was not a voluntary absence because his primary concern was
23 speaking with counsel. But decision to go to the hospital,
24 according to the EMS guy, clearly is your client's.

25 MR. HANSHEW: That's not what the marshal said though.

1 The marshal said that it was Mr. Delgado that asked for that,
2 Judge.

3 THE COURT: Right.

4 MR. HANSHEW: And we know that --

5 THE COURT: That's a whole different issue that will
6 inquire evidence and cross-examination from two sides. I'm not
7 going to litigate that as part of that trial.

8 MR. HANSHEW: Okay. Well, we --

9 THE COURT: If you-all want to have a hearing to
10 litigate that, that's up to you. But my purpose and my only
11 purpose for speaking to any of those people and reviewing the
12 video was to determine whether you client voluntarily absented
13 himself, because if he did, we were going to go to trial.

14 MR. HANSHEW: But the Court took the evidence from one
15 side, which turned out to be incorrect and we're asking that the
16 record reflect the totality of the evidence, Judge. But
17 Judge --

18 THE COURT: You know what? Once we're done here,
19 we'll have the hearing for as many days as it takes and we'll
20 get all of the video from all downstairs, outside that hallway,
21 everybody else, we'll get everybody's statements, we'll call
22 them in and we'll do a full-blown hearing for you. How about
23 that?

24 MR. HANSHEW: That's fine, Judge.

25 THE COURT: All right. Let's go.

1 (Jury present.)

2 THE COURT: Let the record reflect that all members of
3 the jury are present, the United States through its assistant
4 United State's attorneys are present, the defendant and his
5 counsel are present.

6 The witness, Mr. Miller, is on the witness stand.

7 Mr. Arreola?

8 MACE MILLER,

9 DIRECT EXAMINATION BY THE GOVERNMENT

10 MS. ARREOLA: Your Honor, has the witness been
11 reminded that he's still under oath?

12 THE COURT: Oh, I'm sure Mr. Miller knows he's still
13 under oath.

14 MS. ARREOLA: Okay.

15 BY MS. ARREOLA:

16 Q. Mr. Miller, when we broke off, I had asked you about
17 Government Exhibit 131.

18 MR. ARREOLA: Your Honor, may we publish?

19 THE COURT: We're working in that direction.

20 MR. ARREOLA: Okay.

21 THE COURT: There you go.

22 MS. ARREOLA: Thank you Judge.

23 BY MS. ARREOLA:

24 Q. I'm going to read a line from Government Exhibit 131 and
25 then ask you a question.

1 A. Okay.

2 Q. We should still have a significant cash balance, but were
3 charged, in quotes, for and L.C., which currently does not exit
4 as a pledge was substituted. Where did the information come
5 from that F.G.G. was charged for an L.C.?

6 A. As I was trying to reconcile the amount of cash that was
7 available, which I never was able to do with documentation, I
8 was told by Fernando, who -- that we were charged for a letter
9 of credit.

10 Q. Did Marco Delgado ever communicate to you that F.G.G. was
11 charged for a letter of credit?

12 A. Yes.

13 Q. And what did he say about that?

14 A. That out of the proceeds, the existing proceeds that had
15 been brought in by F.G.G., that there was a charge for a letter
16 of credit as opposed to a pledge.

17 Q. Did Mr. Delgado communicate to you how much had been spent
18 on the letter of credit?

19 A. If memory serves me correctly, it was like 4 or \$5 million,
20 like \$4.6 million, something like that.

21 Q. That was from Mr. Delgado?

22 A. That's what I was told by Mr. Delgado and from Fernando,
23 who probably got the information from him.

24 Q. And then I now ask you to take a look at -- what has been
25 marked for identification as Government Exhibit 132. Can you

1 look at this and let me know if you recognize it?

2 A. I do.

3 Q. Is it an e-mail from you to Mr. Gireud and Mr. Delgado?

4 A. Yes, ma'am.

5 MR. ARREOLA: Your Honor, the government offers what's
6 been marked as Government Exhibit 132.

7 THE COURT: Any objection to 132?

8 MS. FRANCO: No, Your Honor.

9 THE COURT: GX-132 is admitted.

10 MS. KANOF:

11 BY MS. ARREOLA:

12 Q. Mr. Miller, was this e-mail sent from you to Mr. Delgado
13 and Mr. Gireud on November 9th in the morning?

14 A. Yes, ma'am.

15 Q. I'm going to ask you to read the first paragraph and then
16 I'm going to ask you question.

17 A. Okay. It has become apparent that F.G.G. Enterprises, LLC,
18 has been disparaged in Mexico with information that is very
19 confusing to me. Maybe somebody can clear it up.

20 Q. Why did you write to Mr. Delgado that F.G.G. was being
21 disparaged in Mexico?

22 A. Well, as I had talked to this gentleman, as you go on in
23 the e-mail, I talked to this gentleman Andres Martinez. I was
24 operating under the assumption that we had not been paid money
25 and Andres Martinez, who was with C.F.E., was a project manager,

1 said, yes, in fact, we were, and I considered that to be
2 disparaging in that we were not living up to our end of the
3 bargain when in fact I thought they were not living up to their
4 end of the bargain because they hadn't paid F.G.G.

5 Q. Could you explain who Mr. Martinez was? You said he was a
6 project manager. For who?

7 A. For this Agua Prieta project.

8 Q. Who did he work for?

9 A. C.F.E.

10 Q. Can you read the next paragraph?

11 A. Yes.

12 Andres Martinez believes that F.G.G. has 18 million in
13 the bank. M.P.S.A. believes that also. Now, we can sit around
14 sarcastically snickering, claim they are misinformed, and
15 that -- or F.G.G. can find out what is going on. The math is
16 rather simple.

17 Would you like my to include the next -- it's a colon,
18 so technically it's the same paragraph.

19 Q. Yes, please.

20 A. Payment one, \$20 million minus M.P.S.A. payment of around
21 11.2 equals 8.8.

22 Payment two, 12 million, yes, 12 -- excuse my
23 language -- stop -- stop the bullshit, minus 7 million equals 5.

24 Payment 3, 59 million minus 54.6 equals 4.4 million.

25 Q. Why did you indicate for payment two, yes, 12, stop the

1 bullshit?

2 A. Because I kept -- I kept being told that it was ten or that
3 it was seven. And the 20 million and the 12 million, that was
4 the payment schedule on the C.F.E. contract.

5 Q. Who told you that the payment was not \$12 million, the
6 second payment?

7 A. Marco and Fernando through Marco.

8 Q. Why are you doing math here? What was the reason for doing
9 the reason here?

10 A. I need money right now. One of my pri- -- probably, my
11 primary job in this whole deal is to get this gear over to the
12 job site is to arrange for transportation. Transportation for
13 something like this costs tens of millions of dollars. I need
14 that 8.8. I need that 5. I need that 4.4 million to pay the
15 transportation company, so I can get this huge gear over to the
16 job site, otherwise, F.G.G. is in breach. I don't need money
17 just for the sake of having it. I need money to perform the
18 contract.

19 Q. Okay. I'm going to ask you to continue reading the next
20 two paragraphs and we'll read along.

21 A. All right.

22 Together that equals 18.2 million. Obviously, we have
23 not received payment three, parenthetically, or have we, but
24 that looks like the computation. F.G.G. has no capital, to my
25 knowledge to operate. These anchors cost more than we have and

1 the money to pay for them did not originate from the equipment
2 acquisition contract. Where is the 13.8 million that was
3 supposed to be in the account? Letter of credit doesn't exist.
4 If we had that money, we could pay M.P.S.A. upfront for anchors,
5 pay our transportation obligation and move on.

6 Q. Okay. Can you continue reading?

7 A. Sure. Next paragraph:

8 However, it is my understandings the large majority of
9 that money has not been in F.G.G.'s possession. I don't know
10 where it went, but it is time to find out. F.G.G.'s problem
11 right now the is not the anchors, not the transportation, but
12 the fact that money has not been received to fulfill F.G.G.'s
13 obligation.

14 I know F.G.G. is ready to handle all contractual
15 commitments. It is impossible with no money. The problem has
16 never been F.G.G.'s ability -- inability to handle these issues.
17 The problem is the resources allocated to these line items never
18 got to F.G.G. That is my perception. Am I wrong?

19 Q. And you write here: It is my understanding the large
20 majority of that money has not been in F.G.G.'s possession.
21 What is that understanding based upon?

22 A. Asking Fernando, did you get -- where's the money. You're
23 the sole -- you're the person on the F.G.G. account. You
24 control that account. Where did you get the money, Fernando?
25 Does F.G.G. have money in the Wells Fargo bank account?

1 And his answer was no.

2 Q. Did Mr. Delgado respond to your e-mail?

3 A. It appears that he did, yes.

4 Q. And your e-mail was sent November 9th 2011, correct?

5 A. Correct.

6 Q. And below this e-mail, is there an e-mail from Mr. Delgado
7 to you the following day, November 10th, in the morning?

8 A. Yes.

9 Q. Now, after you've communicated that F.G.G. doesn't have any
10 money, what was Mr. Delgado's response? Can you read it for the
11 jury?

12 A. Payment three has not been received. Andres denies having
13 participation -- participated in said conversation,
14 parenthetically, but I don't believe him.

15 Q. Did Marco Delgado verbally respond to you, your concern
16 that F.G.G. did not have any capital to operate?

17 A. This is one of the first times it's memorialized. I said
18 this every day. I'm sure, you know, Fernando and Marco both
19 were very sick of hearing me. And at this point, I'm getting,
20 you know, very upset, so, yes, the haranguing by me continued.

21 Q. And when you said this every day, who did you say it to?

22 A. I said it to whoever I was in front of; Fernando, Marco,
23 whomever.

24 Q. What was Marco's response when you communicated this to
25 him?

1 A. I don't think Marco really felt he owed me an explanation.
2 I never really got an explanation. I got like explanations like
3 in the e-mail. I was very, very frustrated.

4 Q. I'm going to ask you to take a look at what is in evidence
5 as Government Exhibit 8.

6 Can you take a look at the indictment and let me know
7 if you recognize it?

8 A. Yes.

9 Q. What do you recognize it to be?

10 A. A memorandum of understanding outlining the relationship
11 between F.G.G. Enterprises and Delgado and Associates, which is
12 Marco's law firm through Marco.

13 Q. Already. I'm going to read you a line from this and then
14 ask you a question.

15 D. And A. will receive an amount equal to
16 62-and-one-half-percent of the difference between the purchase
17 price to F.G.G. of all of the equipment transportation and field
18 services required for the satisfaction of all bid requirements
19 and the amount for which the equipment is sold to C.F.E.

20 Did this sentence give Mr. Delgado an ownership
21 interest in the company F.G.G.?

22 MS. FRANCO: Objection, Your Honor. Calls for
23 speculation.

24 MR. ARREOLA: Your Honor, he was counsel for F.G.G.

25 THE COURT: I'll sustain the objection. He can tell

1 us what he thinks it says.

2 MR. ARREOLA:

3 BY MS. ARREOLA:

4 Q. What is your understanding of this sentence?

5 A. Oh, it gives Marco a profit percentage. It does not give
6 him an ownership of percentage. It's gives him a delineated
7 profit percentage.

8 Q. I'm going to ask you to take a look at the next paragraph.
9 I'm going to read a sentence and then ask you a question.

10 The amount owed to D. And A. will become due and
11 payable upon the awarding of the bid contract to F.G.G. and will
12 be paid at the first disbursement of funds by investor lending
13 institution, as will be F.G.G., in accordance with the contract
14 terms.

15 Was it feasible -- was it possible for F.G.G. to pay
16 Delgado and Associates 62-and-a-half-percent of the profits from
17 the project at the first disbursement?

18 A. No, it was not. It was not feasible, because we didn't
19 know what those profits were going to be. For instance, the
20 \$4.2 million, which is referenced in paragraph three which is an
21 estimate of the cost of transportation was very wrong. It was
22 going to be -- could be upwards of 8 to \$9 million. I wasn't
23 sure there was going to be profit on this job after I got into
24 it.

25 Q. Did you advise Mr. Gireud to sign this agreement?

1 A. No. I -- I did not. I was not in favor of Mr. Gireud
2 signing this agreement.

3 Q. As F.G.G.'s counsel, in-house counsel, did you owe any duty
4 to F.G.G.?

5 A. Sure.

6 Q. What was that duty?

7 A. To act in their best interests.

8 Q. Why is that?

9 A. I have a fiduciary duty to them. I have a duty to put the
10 entity of the client -- it didn't have to be the entity -- any
11 of the client's interests before my interests. I have an
12 obligation as an attorney to do that.

13 Q. Was this agreement, this provision, in the best interest of
14 F.G.G.?

15 A. In my opinion it wasn't.

16 Q. I'm going to ask you to take a look at what's been marked
17 as Government Exhibit 40A. Do you recall looking at this
18 document last week?

19 A. Yes.

20 MR. ARREOLA: Your Honor, housekeeping matter. I
21 failed to offer this document, the Spanish language Government
22 Exhibit 40 is in evidence, but I didn't offer the translation
23 40A, so the government now offers what's been marked as
24 Government Exhibit 40A.

25 MS. FRANCO: No, objection.

1 THE COURT: GX-40A is admitted.

2 BY MS. ARREOLA:

3 Q. Do you see on this document where it indicates that this is
4 an e-mail from Mr. Gireud to Mr. Ponce copying Mr. Delgado?

5 A. Yes, ma'am.

6 Q. And the date sent shown was February 11th 2010. Do you see
7 that?

8 A. Yes, ma'am.

9 Q. Do you see that attached to the e-mail is a letter dated
10 January 30th, 2010, on F.G.G. letterhead?

11 A. Yes, ma'am.

12 Q. I'm going to read a paragraph from this and ask you a
13 question.

14 A. Okay.

15 Q. All conditions precedent and obligations post-bid award
16 have been met by F.G.G.

17 What is your understanding of what the term
18 "conditions precedent and obligations post-bid" were?

19 A. To post a letter of -- letter of credit as required by the
20 contract.

21 Q. And why did you call that, the letter of credit, a
22 condition precedent. Or excuse me --

23 A. I'm not sure that I called it that.

24 Q. Do you know who wrote this?

25 A. I'm not sure.

1 Q. Okay. So I withdraw the question.

2 Do you know -- what's your understanding of why it was
3 considered a condition precedent?

4 MS. FRANCO: Objection, Your Honor. Calls for
5 speculation. He already said he didn't write the letter.

6 THE COURT: I'll overrule the objection.

7 Don't speculate. Tell us what it meant to you as
8 counsel.

9 A. We had an obligation under a contract with C.F.E. and one
10 of the obligations was to provide a letter of credit.

11 BY MS. ARREOLA:

12 Q. What was it precedent to?

13 A. Precedent to us performing the contract. We would run
14 parallel with the contract that needed to be provided at that
15 time.

16 Q. Did Marco Delgado communicate this to you?

17 A. Yes, I suppose he did since the contract was in Spanish.

18 Q. Okay. And --

19 MR. ARREOLA: Your Honor, may I have a moment?

20 THE COURT: Yes, ma'am.

21 MR. ARREOLA: Your Honor, no further questions for
22 this witness.

23 THE COURT: Ms. Franco?

24

25 MACE MILLER,

1 CROSS-EXAMINATION BY THE DEFENDANT

2 BY MS. FRANCO:

3 Q. Mr. Miller, you testified last week and a little bit this
4 morning about your relationship -- your attorney relationship
5 with F.G.G. and you indicated that you first became involved as
6 outside counsel, correct?

7 A. Correct.

8 Q. And then later you became more inside counsel or corporate
9 counsel to F.G.G., correct?

10 A. Yes, ma'am.

11 Q. And your understanding of what Mr. Delgado's role was is
12 that he was providing the service with regard to the Mexican
13 part of this deal. Correct?

14 A. That's correct.

15 Q. And your responsibility on the American side as far as
16 arranging for shipments of the equipment to Mexico, correct?

17 A. That's right.

18 Q. And his was to ensure that the communication with C.F.E.
19 was done in a way to ensure the other part of the contract was
20 taken care of?

21 A. Yes, ma'am.

22 Q. Which would be the money portion of it, correct?

23 A. Money and anything with C.F.E., he was the person in charge
24 with that.

25 Q. And you and Mr. Gireud had known each other for sometime

1 prior to the corporation of F.G.G.?

2 A. No, not really. We had seen each other on a plane and been
3 introduced, but I hadn't known him for years. I'd known him for
4 six months.

5 Q. Did your relationship with Mr. Gireud, is it -- did it
6 predate any relationship you had with Mr. Delgado?

7 A. That's a good question. I mean I had met Marco a couple of
8 times in various settings, very similar to Fernando. I met them
9 maybe at, you know, at a party. I don't know which one I knew
10 first, frankly.

11 Q. And Mr. Gireud worked for a relative of yours at Kendrick
12 Electric?

13 A. Kendrick Electric is my uncle and Fernando had gotten --
14 had left El Paso Electric and I thought he would be a good fit
15 at Kendrick Electric.

16 Q. So you helped make that business connection for your uncle
17 and Mr. Gireud?

18 A. Yes. Yes, ma'am.

19 Q. And in fact, and Kendrick Electric was an initial investor
20 in F.G.G., correct?

21 A. That's correct -- not in F.G.G. It would be in this
22 project. It wasn't an offering for like a share. It was an
23 investment in the project.

24 Q. F.G.G. was created as a sole purpose entity, correct?

25 A. A single -- that was my understanding that it was going to

1 be specifically for this purpose.

2 Q. And so your uncle wanted to invest in the deal between
3 C.F.E. and F.G.G. and M.P.S.A., correct?

4 A. Yes, and he wanted to work on the job as well.

5 Q. Now, you indicated last week that you had worked on the
6 teaming agreement, which is -- let me bring it up so you can
7 look at it while we're talking about it.

8 It's Government's Exhibit 7?

9 A. Yes, ma'am.

10 Q. And you've worked with Mr. Ponce on drafting this contract
11 between F.G.G. and M.P.S.A.?

12 A. I didn't have a lot of conversation with Mr. Ponce. It was
13 more Patrick Altamura.

14 Q. So he wasn't instrumental in drafting this contract,
15 Mr. Ponce?

16 A. Ponce? I -- I don't know what kind of input he had on the
17 back end. My communication with him I didn't find him
18 instrumental.

19 Q. On to page four. And it's a paragraph that you testified
20 about, so I'm not going to spend too much time on it, but in
21 paragraph that's number two, it talks about the fact about the
22 letters of credit unless C.F.E. were to waive such a requirement
23 as appropriate. You see that, correct?

24 A. Yes, ma'am.

25 Q. So it was contemplated even back when this teaming

1 agreement was put together by F.G.G. and M.P.S.A. that such a
2 letter of credit could be waived by C.F.E. if they so desired?

3 A. It appears that way, yes.

4 Q. And just so that we all understand, the requirement of a
5 letter of credit, that was a requirement that C.F.E. had,
6 correct?

7 A. That's correct.

8 Q. It was not a requirement that M.P.S.A. had placed on
9 F.G.G., correct?

10 A. That's correct.

11 Q. And with regard to the subcontract that was later entered
12 into between F.G.G. and M.P.S.A. -- which is I believe
13 Government's 12? Let me bring that up for you.

14 And you indicated that you don't read Spanish,
15 correct?

16 A. That's right.

17 Q. And so although you participated in the subcontract, you
18 weren't exactly clear of the terms; is that fair to say?

19 A. That's probably fair to say.

20 Q. And except for there is an English part of this, which was
21 a handwritten note that was placed in the contract -- I'm going
22 to scroll down so you can see it. You see that, correct?

23 A. I see it.

24 Q. And it's something that Mr. Gireud is president of F.G.G.
25 or sole member of F.G.G. and Mr. -- it looks like Wunder had

1 signed, correct?

2 A. Yes, ma'am.

3 Q. And do you know who wrote this, this handwritten portion of
4 it?

5 A. I would be speculating.

6 Q. Okay. And this handwritten portion in English on a Spanish
7 contract, it would indicate would it not that, there were still
8 some important terms of the contract between F.G.G. and M.P.S.A.
9 that had not been resolved, correct?

10 A. That is correct.

11 Q. And it would be substantial terms, for instance, the letter
12 of credit, correct?

13 A. Yes.

14 Q. Now, you indicated that when Mr. Delgado spoke to you about
15 John Adams that that was a conversation that occurred in Mexico;
16 is that correct?

17 A. He spoke -- he called me. The conversation between John
18 Adams and Marco would have occurred in Mexico, but he was
19 calling me and I was in the United States.

20 Q. Okay. And at that point in time you -- was that during --
21 prior to the -- the subcontract being entered into or was it
22 earlier in December? Do you recall?

23 A. I think it was prior to this.

24 Q. All right. And so -- and in that conversation, he's
25 indicating to you in early December, I guess, that he's in

1 Mexico with Mr. Adams, and Mr. Adams had indicated that F.G.G.
2 could pledge their equipment, correct?

3 A. That's right.

4 Q. And at the time you thought that was a smart and creative
5 way of handling the letter of credit issue, correct?

6 A. Thought that was a good thing, yes.

7 Q. And because from what you testified to, the letter of
8 credit would have required \$20 million worth of assets that
9 F.G.G. would have had, correct?

10 A. Or another party to come in and place \$20 million and
11 F.G.G. would have to pay them for the use of those assets.
12 \$20 million was going to have to be somewhere.

13 Q. Okay. And any -- was it clear that F.G.G. had \$20 million
14 worth of assets?

15 A. It was clear they did not.

16 Q. That would have been clear to everyone, correct?

17 A. I would think so.

18 Q. I'm going to ask you to tell me about -- I have a couple of
19 questions about Government Exhibit 95. If I can find it.

20 A. Okay.

21 Q. Do you see it on your screen there?

22 A. Yes.

23 Q. I think it's already been admitted into evidence. I'm
24 going to scroll down, because there's something in there. This
25 is an e-mail from you, correct, or Mr. Delgado?

1 A. Eventually, it's an e-mail from me.

2 Q. Okay. There we go.

3 And on this last paragraph here where the little hand
4 is, it says, regarding another matter, it's my understanding
5 that Mitsubishi has attempted to interfere with an existing
6 long-term service agreement contract between F.G.G. and C.F.E.
7 Could you tell us about that?

8 A. Yeah, I was -- it was communicated to me by Marco that --
9 so F.G.G. already had the long-term service agreement. That was
10 part of the winning bid. And so we have a contract to provide
11 equipment and then we have this other long-term service
12 agreement, which is an agreement, like you would think, to
13 service the equipment that we were giving them. That was a
14 really important part of the win, of the bid.

15 And so we had tried to work out with Mitsubishi terms
16 where they would provide the long-term service agreement. That
17 was unsuccessful. And then I was told that they were trying to,
18 for a lack of a more technical term, go around F.G.G. and trying
19 to contract with C.F.E., you know, one-on-one without F.G.G.,
20 kind of circumventing that.

21 Q. And in other words, they were trying to cut out the
22 middleman, so to speak?

23 A. Yes.

24 Q. And F.G.G. was a middleman in this circumstance with the
25 long-term service agreement?

1 A. Yes, ma'am.

2 Q. And you mentioned before that the long-term service
3 agreement was a very profitable part of the bid between the bid
4 award that F.G.G. received, correct?

5 A. It was hoped to be, yes.

6 Q. And that would be because it can last for several years or
7 why was it an important thing for a -- for part of this?

8 A. That's part of it. It was a long-term contract. I don't
9 remember the duration right now, but I mean it -- you know, it's
10 many, many years, and there theoretically should be some
11 profitability every year, so it was a different cash flow model
12 than the -- providing the equipment.

13 Q. And if F.G.G. had stayed in the middle between M.P.S.A. and
14 C.F.E., then that would have been something that F.G.G. would
15 have gotten that M.P.S.A. would not have gotten. They would
16 have had to have paid for that?

17 A. Right. F.G.G. theoretically would have paid M.P.S.A. as a
18 subcontractor to perform the long-term service agreement.

19 Q. Now Government's Exhibit Number 4, which is the Power of
20 Attorney. I know you testified about this, I think last week on
21 Friday, but that when you asked Mr. Delgado about the changing
22 of the bank accounts that he told you that he believed that this
23 power of attorney that he and Mr. Gireud had executed gave him
24 the right to change the payment terms, correct?

25 A. That's correct.

1 Q. And you disagreed with his reading of that power of
2 attorney, correct?

3 A. I did.

4 Q. And did you have a chance to look at the power of attorney
5 at the time the two of you were discussing that?

6 A. I don't know if it was in front of us when we were
7 discussing it. I don't think it was.

8 Q. Had you seen it when you were having this discussion with
9 him as to what this power of attorney conferred to Mr. Delgado?

10 A. I had probably just seen it.

11 Q. And I'm going to direct you to the last page of the power
12 of attorney. And at the -- I guess these are standard terms
13 that are in the power of attorneys that are effective in Mexico.
14 And it talks --

15 MR. ARREOLA: Objection, Your Honor. Counsel is
16 testifying.

17 THE COURT: Well --

18 MR. ARREOLA: It's in -- I'll move on, Your Honor.

19 THE COURT: Yes, ma'am.

20 BY MS. FRANCO:

21 Q. At the top of page four, it walks about all of the general
22 powers of attorney for litigation and collections. Do you see
23 that?

24 A. Yes, ma'am.

25 Q. And it would appear that this power of attorney would give

1 very broad rights to the holder of this, correct?

2 A. What do you mean by broad?

3 Q. All rights to -- let's see -- for litigation and
4 collections that -- if you read down, it says to be -- to have
5 all of the rights as an owner as an owner would have.

6 A. It says -- I'm just reading -- general powers of attorney
7 for litigation collections. Yes, it gives those powers, yes.

8 Q. I'm going to ask you about Government's Exhibit -- let me
9 see if I can find it -- 87. This is a letter that -- had you
10 had a chance to look at this letter at the time back in July of
11 2010?

12 A. Can you just scroll down, please?

13 Q. Yes, sir.

14 A. I'm not sure. I don't know.

15 Q. You talked about it on Friday when Ms. Arreola was
16 directing you whether or not -- this is about the disbursement
17 of the \$12 million payment, correct?

18 A. This is about the disbursement of the \$12 million payment,
19 yes.

20 Q. And you testified a little while ago about -- I think that
21 was Government's Exhibit 132 -- that there was some disagreement
22 as to whether it was 10 million or 12 million, but this letter,
23 which predates your e-mail, because it's back on July 15th of
24 2010, it clearly shows Mr. Gireud giving directions to
25 Mr. Delgado as to how to disburse the \$12 million?

1 A. That's what the letter says, yes.

2 Q. Now, with regard -- I want to talk to you about
3 Government's Exhibits 131 and 132. So let me pull those.

4 In Government's Exhibit 131, you're indicating that
5 you're not sure where the money went that had been received,
6 correct?

7 A. That's correct.

8 Q. And the same is true in Government's Exhibit 132, correct?

9 A. Correct.

10 Q. It's also where you break down payment one, payment two,
11 correct?

12 A. That's correct.

13 Q. And you indicated that you weren't sure that F.G.G. had --
14 well, M.P.S.A. has no capital and you're not sure where -- if
15 F.G.G. had any money in its possession, correct?

16 A. That's correct.

17 Q. I'm going to refer to you Government's Exhibit 2, which is
18 summary chart, and if you'll look down here -- is that in front
19 of you, sir?

20 A. It is, ma'am.

21 Q. Okay. And so if you look with me under that initial
22 disbursement of the \$20 million, you'll agree with me that
23 F.G.G. Enterprises received \$2.1 million, correct?

24 A. Correct.

25 Q. And that was an account that was for Mr. Gireud. It's in

1 Mr. Gireud's name, correct?

2 A. I can't tell by this document. I mean I don't know what
3 account it went to.

4 Q. Do you dispute that it went to F.G.G. Enterprises?

5 A. Oh, no, I don't dispute that. I just don't know nature of
6 the account that it went to.

7 Q. And then on the \$12 million payment, do you see right here
8 on July the 30th of 2010, that F.G.G. Enterprises received
9 \$1,350,110?

10 A. Yes.

11 Q. So at that point in time when you are writing the e-mail,
12 going back to Government's Exhibit 132, in fact, F.G.G. had
13 received \$4,450,100, correct?

14 A. I don't know that. I haven't added them up.

15 Q. Do you want a moment to do the math so you can add it up?

16 A. If that's close enough.

17 Q. So you would agree with me then that when you wrote the
18 e-mail in July?

19 A. Uh-huh.

20 Q. Excuse me. Let me pull it up for you -- I'm sorry -- in
21 November of 2011, that at that point in time, F.G.G. had
22 received over \$4.4 million?

23 A. I had no knowledge of that.

24 Q. Okay. Well, Mr. Miller, you did receive some money from
25 F.G.G., did you not?

1 A. I did.

2 Q. And in fact, going back to 2009, did you receive \$20,000
3 from Mr. Delgado?

4 A. In 2009? I may have.

5 Q. Let me show you what has been marked as Defendant's
6 Exhibit 167. Do you see that in the front of you?

7 A. Yes.

8 Q. And that appears to be a check that Mr. Delgado --

9 MS. FRANCO: Well, Your Honor, at this time, I move
10 for the admission -- I do not believe this has been admitted --
11 of Defendant's Exhibits 167, just the first page.

12 THE COURT: Ms. Arreola, Defendant's 167?

13 MR. ARREOLA: No, objection, Your Honor.

14 THE COURT: Is there -- how much pages are there?

15 MS. FRANCO: There's two pages, Your Honor.

16 THE COURT: So it's just the first page.

17 MS. FRANCO: Yes. The second page is a different
18 check.

19 THE COURT: Defendant's 167, the first page, is
20 admitted.

21 MS. FRANCO: And if you can publish?

22 THE COURT: Yes, ma'am.

23 BY MS. FRANCO:

24 Q. Mr. Miller, so that would appear to be a check that
25 Mr. Delgado wrote to you in 2009 for \$20,000; is that correct?

1 A. Yes, ma'am.

2 Q. And Government's Exhibit 144, there was a check that
3 Mr. Gireud wrote to you for \$10,000 and that would be back in
4 2009. Do you recall that?

5 A. I don't recall it, but if you say so, I don't dispute it
6 either, I mean...

7 Q. So Government's Exhibit 144, for the record, that's made
8 out to you, and it's a \$10,000 check from Mr. Gireud from F.G.G.
9 Enterprises. Do you see that?

10 A. Yes, ma'am.

11 Q. And at the bottom of that, it says consulting services,
12 correct?

13 A. Correct.

14 Q. And in 2010, also Government's Exhibit 144, it appears
15 Mr. Gireud wrote a check to you in the amount of three \$4,000.
16 Do you see that, sir?

17 A. Yes, ma'am.

18 Q. And then it also in Government's Exhibit 144, there was a
19 check that Mr. Gireud wrote to you for \$1,230, and it appears
20 that was for rent; is that correct?

21 A. Yes, ma'am.

22 Q. Was he renting space from you?

23 A. No. I probably paid the rent. He probably reimbursed me.

24 Q. And you also indicated that Mr. Kendrick or Kendrick
25 Electric is your uncle, correct?

1 A. That's right.

2 Q. And were you aware of Government's Exhibit 144 again that
3 Mr. Gireud apparently paid back Mr. Kendrick for his investment.
4 It's a check on April the 2nd, 2010, for \$250,000. Do you see
5 that?

6 A. Yes, ma'am.

7 Q. Okay. And also Government's Exhibit 144, there's also a
8 check in September of 2010 and in the amount of \$100,000. And
9 is Ralph Kendrick your uncle?

10 A. Yes, ma'am. And I was aware of this check, yes.

11 Q. And you were aware of that too?

12 A. Uh-huh.

13 Q. Is that a, yes, sir?

14 A. Yes, ma'am.

15 Q. And in 2011 -- let you see something since it has not been
16 admitted.

17 Did you see in front of you what's been marked as
18 Defendant's Exhibit 206?

19 A. Yes, ma'am.

20 MS. FRANCO: Your Honor, at this time I'd move for
21 admission of Defendant's 206.

22 THE COURT: Any objection to 206, Ms. Arreola?

23 MR. ARREOLA: No, Your Honor.

24 THE COURT: Who's writing that check?

25 MS. FRANCO: Mr. Gireud.

1 THE COURT: It's F.G.G.?

2 BY MS. FRANCO:

3 Q. And Mr. Miller --

4 THE COURT: Do you-all have an updated list?

5 MS. FRANCO: We'll provide it to you, Your Honor.

6 BY MS. FRANCO:

7 Q. And Mr. Miller, that appears to be a check that Mr. Gireud
8 wrote to you for \$200,000 back in June of 2011.

9 A. Yes, ma'am.

10 Q. Let me show you what's been marked as Defendant's
11 Exhibit 207. Do you recognize that?

12 A. Yes, ma'am.

13 Q. Let me just show you the exhibit number.

14 MS. FRANCO: I move at this time, Your Honor, for the
15 admission of Defendant's Exhibit 207.

16 THE COURT: Any objection?

17 MR. ARREOLA: No, objection, Your Honor.

18 THE COURT: Defendant's 207 is admitted.

19 BY MS. FRANCO:

20 Q. And Mr. Miller, this is a check also from Mr. Gireud in the
21 amount of 114,000; is that correct?

22 A. Yes, ma'am.

23 Q. At the time that you are writing the e-mail to Mr. Gireud
24 and Mr. Delgado, at that point in time between you and your
25 family, you had received over a million dollars from F.G.G.,

1 correct?

2 A. Me and my family? Are you talking about my uncle?

3 Q. Yes, sir.

4 A. Well he was repaid on an investment. This money here was
5 money that I believe it was from Sulzer that was advanced in
6 2011, the 114 and the 200?

7 Q. Okay. Mr. Miller, let me back up and ask the question
8 again.

9 A. All right.

10 Q. At that point in time you wrote the e-mail to Mr. Gireud
11 and Mr. Delgado, you had personally received over \$600,000,
12 correct, from an F.G.G. account?

13 A. I personally received over 600,000.

14 Q. And your uncle had received \$350,000, correct?

15 A. Yes.

16 MS. FRANCO: May I have just a moment, Your Honor?

17 THE COURT: Yes, ma'am.

18 MS. FRANCO: Pass the witness, Your Honor.

19 THE COURT: Ms. Arreola?

20 All right. Apparently, I did not officially say 206
21 was admitted. 206 is admitted, Defendant's 206 is admitted.

22 MS. FRANCO: Thank you, Your Honor.

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MACE MILLER,

REDIRECT EXAMINATION BY THE DEFENDANT

BY MS. ARREOLA:

Q. Mr. Miller, I'm going to show you what's been or what is already in evidence as Government Exhibit 4. Do you recall seeing this when Ms. Franco was asking you questions?

A. Yes, ma'am.

Q. I'm going to ask you to take a look at a page that she showed you which is page four. Do you recall seeing this during your examination?

A. Yes, ma'am.

Q. I'm going to scroll up to the bottom of the page before. And I'm going to read that and then I'm going to ask you a question.

A. Okay.

Q. Article 2554 of the Federal Civil Code of the Mexican United States reads as follows.

Is this series of paragraphs on page four a recitation of what is in a Mexican Federal Civil Code?

A. Yes, ma'am.

Q. And in this, is Mr. Fernando Gireud giving all of the powers that are within these paragraphs of the Mexican Federal Civil Code?

MS. FRANCO: Objection, Your Honor. Calls for an expert opinion.

1 MR. ARREOLA: She asked him the question; same
2 question a different way.

3 THE COURT: Well, I'm going to overrule that
4 objection. He can tell us what it means to him as a lawyer.

5 BY MS. ARREOLA:

6 Q. And if you need to look at the numbered document, it's in
7 front of you in one of the binders?

8 A. Could you repeat your question, ma'am?

9 Q. Is this Power of Attorney providing Mr. Delgado with all of
10 the powers that are recited here or is it simply quoting what is
11 in the Mexican Federal Civil Code?

12 A. It's Roman numeral VII is quoting the Federal Civil Code of
13 the Mexican United States.

14 Q. And on page four, is there any paragraph here, any
15 provision here that gives authorization to divert funds to an
16 offshore account and go on a spending spree?

17 A. No.

18 Q. Is there any authorization here to defraud a client?

19 A. No, ma'am.

20 Q. Is there any authorization in here to conceal how much
21 money was deposited into F.G.G.'s account?

22 A. No, ma'am.

23 Q. Is there any authorization in here to misrepresent how much
24 money has been deposited into the account?

25 A. No, ma'am.

1 Q. Ms. Franco also asked you about the e-mail that you sent in
2 November 2011, which is Government Exhibit 132.

3 A. Uh-huh. Yes.

4 Q. Do you see that this e-mail was sent on November 9th, 2011?

5 A. Yes, ma'am.

6 Q. After you sent this e-mail or at the time that you sent
7 this e-mail, did you know that there was at least \$36,000 in the
8 account that Mr. Delgado later used to pay somebody named
9 Gabriel Larraguivel?

10 A. No. No, I do not.

11 Q. At the time that you sent that e-mail in November 2011, do
12 you know that there was over \$100,000 that Mr. Delgado then sent
13 to Jar Investments and Rudolph Chevrolet?

14 A. No, ma'am.

15 Q. At the time that you sent that e-mail, did you know that
16 there was at least \$10,000 that he then spent --

17 MS. FRANCO: I'm sorry to interrupt, but she's
18 indicating that this is after the e-mail had been sent 2012, and
19 she's talking about in November of 2011, so it's a
20 mischaracterizing what has been in evidence.

21 MR. ARREOLA: Your Honor, the e-mail is dated
22 November 2011, and the transactions I'm looking at are in 2012.

23 THE COURT: I'm not sure what your objection is,
24 Ms. Franco.

25 MS. FRANCO: Your Honor, she's testifying about --

1 THE COURT: Right. You're saying that he couldn't
2 have known.

3 MS. FRANCO: Right, because this happened in 2011.

4 THE COURT: All right. But I guess you can cover that
5 on your re-cross.

6 BY MS. ARREOLA:

7 Q. Do you see any other deposits into the account on summary
8 chart two other than the March 9th, 2010 deposit and a July 6th,
9 2010, deposit?

10 A. I don't see any other deposits, no, ma'am.

11 Q. And at the time that you sent that e-mail on November of
12 2011, were you aware that there was at least \$150,000 in the
13 account that then went to Delgado and Associates' IOLTA account?

14 A. No, ma'am.

15 Q. Now Ms. Franco also asked you about a number of checks.

16 A. Yes, ma'am.

17 Q. And I'm going to ask you about those in a moment.

18 Did you receive any funds from a Skippings and Rutley
19 account in the Turks and Caicos Islands?

20 A. No, ma'am.

21 Q. I'm going to ask you to take a look at Defense Exhibit 206.

22 A. Yes, ma'am. I see it.

23 Q. What was this check for?

24 A. This check, my recollection of this is that there had been
25 some payments made by Sulze Turbo Services, which was going to

1 provide the L.T.S.A. It was really a loan, it was an upfront
2 loan from Sulzer to F.G.G. to get things moving on the L.T.S.A.

3 Q. Why were you paid from that money?

4 A. Because I needed to be paid for my work that I was doing.
5 I was spending hours a day, you know, all week arranging
6 transportation and doing other things. What I was told is there
7 was no money in the F.G.G. account from the equipment sales to
8 pay me and so they paid me out of this.

9 Q. I'm going to ask you now to look at Defense Exhibit 207.

10 A. Yes, ma'am.

11 Q. What was this check for?

12 A. Same thing. It was that same type of a deal. I needed to
13 get paid and Sulzer Turbo Services had given some money to
14 F.G.G. and that's how F.G.G. paid me.

15 Q. Now Ms. Franco also asked you some questions about the
16 teaming agreement, which I'm going to pull up. That's
17 Government Exhibit 7. I'm going to read you a paragraph from
18 the teaming agreement and then ask you a question.

19 For the record, it's Government Exhibit 7, and I'm
20 going to be reading from Section 1.3, Teaming for L.T.S.A.,
21 paragraph D: Prior to submission of the proposal, F.G.G. shall
22 obtain C.F.E.'s unconditional consent for the assignment of the
23 L.T.S.A. prime contract -- I'm going to skip what's in
24 parenthesis -- between F.G.G. and C.F.E. to M.P.S.A. as provided
25 in paragraph 1.3E below, if F.G.G. is awarded the L.T.S.A. prime

1 contract. C.F.E.'s refusal to give its prior unconditional
2 consent to F.G.G. for the assignment or F.G.G.'s inability or
3 refusal to assign the L.T.S.A. prime contract to M.P.S.A. for
4 any reason, such that M.P.S.A. will not be the sole party and
5 contract directly with C.F.E. on the basis described below that
6 the L.T.S.A. prime contract shall be a reasonable cause for
7 termination of this agreement.

8 Isn't it a fact that F.G.G. agreed to assign the
9 L.T.S.A. prime contract to M.P.S.A.?

10 A. They -- the memorialization of the contract -- this is a
11 teaming agreement. Certainly under this teaming agreement, that
12 was the case. F.G.G. and M.P.S.A. never reached terms as to how
13 each of those organizations would participate in the L.T.S.A.
14 prime contract. But certainly under the teaming agreement, that
15 is an affirmative duty, yes.

16 Q. I'm going to now ask to you look at Government Exhibit 40A.
17 Oh, excuse me. That's the wrong exhibit.

18 I'm going to ask you to take a look at Government
19 Exhibit 95. Do you recall Ms. Franco asking you about this
20 e-mail?

21 A. Yes, ma'am.

22 Q. And do you recall her asking about this last paragraph?

23 A. Yes, ma'am.

24 Q. I'm going to read the first sentence just to refresh your
25 memory.

1 Regarding another matter, it is my understanding that
2 Mitsubishi has attempted to interfere with an existing long-term
3 service agreement contract between F.G.G. and C.F.E.

4 Where did this information come from?

5 A. From Marco.

6 Q. Do you have any personal knowledge of Mitsubishi having
7 tried to interfere with an L.T.S.A.?

8 A. No, I don't have any personal knowledge of that.

9 Q. Ms. Franco also asked you about a conversation with
10 Mr. Delgado in which he represented to you that John Adams had
11 agreed to a pledge. Do you recall that testimony?

12 A. I do.

13 Q. Did John Adams ever personally communicate to you that he
14 had approved a pledge of Mitsubishi's equipment?

15 A. No, ma'am.

16 Q. I'm going to ask you to take a look at Government
17 Exhibit 18A, which is the prime contract.

18 A. Okay.

19 Q. Oh, excuse me. I'm looking at the wrong exhibit.

20 Ms. Franco asked you about whether or not it was
21 contemplated that C.F.E. could waive the letter of credit
22 requirement. Do you recall her asking you about that?

23 A. I do, yes.

24 Q. Did Marco ever represent to you that C.F.E. had waived the
25 letter of credit requirement?

1 A. No.

2 Q. What was your understanding of the letter of credit
3 requirement based on what Mr. Delgado told you?

4 A. That it still existed. That it always existed.

5 Q. And what did he say to you that gave you that impression or
6 understanding?

7 A. We have to go get a letter of credit. We need to look for
8 a letter of credit.

9 Q. And did he tell you whether or not he had successfully
10 obtained a letter of credit?

11 A. He said that he arranged for a letter of credit to be
12 posted, by a third party.

13 MR. ARREOLA: Your Honor, may I have a moment?

14 THE COURT: Yes, ma'am.

15 MR. ARREOLA: No further questions, Your Honor.

16 THE COURT: Ms. Franco?

17 MACE MILLER,

18 RE CROSS-EXAMINATION BY THE DEFENSE

19 BY MS. FRANCO:

20 Q. Mr. Miller, the teaming agreement between M.P.S.A. and
21 F.G.G. contemplated a letter of credit for the long-term service
22 contract as well, correct?

23 A. Yes, I believe it did.

24 Q. And the requirements of C.F.E. would require a long-term
25 service -- I'm sorry -- under the long-term service contract

1 with C.F.E., it too required a letter of credit, correct?

2 A. Yes, ma'am.

3 MS. FRANCO: May I have just a moment, Your Honor?

4 THE COURT: Yes, ma'am.

5 MS. FRANCO: Pass the witness, Your Honor.

6 THE COURT: May Mr. Miller be permanently excused?

7 MS. KANOF: Yes, Your Honor.

8 THE COURT: Ms. Franco?

9 MS. FRANCO: Yes, Your Honor.

10 THE COURT: Mr. Miller, thanks so much for coming
11 down. You are excused and free to go.

12 (Witness excused.)

13 THE COURT: Who's your next witness?

14 MS. KANOF: Your Honor, the government calls Juan
15 Pablo Matamala Cortes.

16 (Interpreter Edna Ledesma sworn in by the Court.)

17 (Witness present and sworn by the Court.)

18 JUAN PABLO MATAMALA CORTES,

19 DIRECT EXAMINATION BY THE GOVERNMENT

20 BY MS. KANOF:

21 Q. State your name, please.

22 A. Juan Pablo Matamala Cortez.

23 Q. And how are you employed, sir?

24 A. I work at the Attorney General's office for the
25 electrical -- the Federal Electrical Commission.

1 Q. And where is that located?

2 A. In the City of Mexico. Mexico Distrito Federal.

3 Q. And you say you worked in the Attorney General's office.

4 Can we call it -- first of all, do you call it C.F.E.?

5 A. Yes.

6 Q. Okay. And you said you work in the Attorney General's

7 office with the C.F.E. Are you an attorney?

8 A. Yes.

9 Q. Where are you an attorney?

10 A. In Mexico City.

11 Q. And could you briefly give the jury a little bit of your

12 employment background with regard to your practices as an

13 attorney with the government of Mexico?

14 A. I'm sorry. Can you repeat the question?

15 Q. How long have you been an attorney?

16 A. Since 1998.

17 Q. In 2004, where did you go to work?

18 A. For a Mexican petroleum company.

19 Q. And what is it called?

20 A. PEMEX.

21 Q. And is that -- it's P-E-M-E-X, all caps -- is PEMEX owned
22 by the Mexican government?

23 A. Yes. It was a centralized entity.

24 Q. And did you work as an attorney for PEMEX?

25 A. Between 2004 and 2008.

1 Q. Where did you go in 2008?

2 A. I went to work with a company Luz, L-U-Z, y, that's Y,
3 Fuerza, F-U-E-R-Z-A.

4 Q. And did the power and light company break up?

5 A. Yes. The electric company that's provided power to the
6 center of the country, the city.

7 Q. And after that company broke up, did you continue to work
8 jobs for short periods of time with different parts of the
9 Mexican government?

10 A. Yes.

11 THE INTERPRETER: I need clarification, Your Honor.

12 THE COURT: Yes, ma'am.

13 (Interpreter and witness conversing in Spanish.)

14 A. Yes. I worked first at the legal advisory office for the
15 presidency of the Mexican government, and then I went to work
16 for D.I.F., which is the Department of Family Integration, and
17 then following that I went back to work for another seven years
18 with -- I'm sorry. Correction -- seven months at PEMEX.

19 BY MS. ARREOLA:

20 Q. And the president that you worked for, was that Calderon?

21 A. Yes.

22 Q. Why did you leave PEMEX a second time?

23 A. Because while I was working, the Attorney General working
24 for the C.F.E., I requested that I go work with them with the
25 C.F.E.

1 Q. Was that the same attorney general that you had worked for
2 at PEMEX before?

3 THE INTERPRETER: I'm sorry? In PEMEX?

4 MS. KANOF: Yes.

5 BY MS. ARREOLA:

6 Q. Was that the same general counsel that you worked for now
7 at C.F.E.?

8 A. Yes. Where he was working previously with PEMEX, he was
9 head of a contractual obligations, and then when he requested I
10 go work with him with C.F.E., at that point he was now Attorney
11 General.

12 Q. And when did you go to begin your job in the Attorney
13 General's office and C.F.E.?

14 A. That would be May 19th, 2011.

15 Q. What is C.F.E.?

16 A. The C.F.E. is a commission. It's a state entity whose main
17 objective -- excuse me -- is to generate, transmit the sale, the
18 distribution of electrical energy throughout the country of
19 Mexico.

20 Q. What is the Fideicomiso?

21 A. The one related to prior expenses? The Commisso?

22 Q. Is there -- in the documents that have been admitted into
23 evidence with regard to C.F.E., there is a term the Fideicomiso.
24 So what is the Fideicomiso?

25 MR. HANSHEW: Objection, Your Honor. He hasn't been

1 shown the documents that have been admitted into evidence. How
2 is he going to testify to that?

3 THE COURT: Maybe -- has he seen these documents that
4 we can just lay some foundation?

5 MS. KANOF: Yes, Your Honor.

6 BY MS. ARREOLA:

7 Q. Are you familiar with the documents -- all of the documents
8 that were generated to enter into an agreement to provide
9 electrical generation for Agua Prieta?

10 A. Yes.

11 Q. I have in front of you --

12 MS. KANOF: If it would please be published,
13 Government Exhibit 18, in Spanish?

14 THE COURT: GX-18 has been admitted.

15 BY MS. KANOF:

16 Q. And is it in front of you on the screen?

17 A. Yes.

18 Q. And it's hard to read through the stamps, but del
19 fideicomiso?

20 A. (Responds in Spanish.)

21 THE INTERPRETER: I'm sorry.

22 MS. KANOF: Sorry.

23 THE INTERPRETER: Just a minute.

24 THE COURT: Did you --

25 THE INTERPRETER: Are we looking at the pledge or the

1 contract?

2 MS. KANOF: You're looking at Government's
3 Exhibit Number 18.

4 THE COURT: Is it not on your screen?

5 MS. KANOF: It's Government Exhibit 18.

6 THE COURT: It should be on that screen.

7 THE INTERPRETER: Yes, Your Honor, but I have the
8 translated documents that if I understand it, have been --

9 THE COURT: It's 18A. Do you need to look at the
10 English version?

11 THE INTERPRETER: I want to follow the English.

12 MS. KANOF: I'll open it for you. That would be
13 the -- it's the prime contract. Do you see it?

14 THE INTERPRETER: Oh, I see it now. "This would be
15 the contract by and between the trustee for the trust for the
16 management of prior expenses number 10248."

17 BY MS. KANOF:

18 Q. Okay. And I'm going to go back to the Spanish for the
19 witness.

20 What is the Fideicomiso?

21 A. The Fideicomiso is essentially a contract that was
22 celebrated between for the C.F.E. and this was signed between
23 the C.F.E. and the National Bank of International Commerce and
24 they would serve as a fiduciary for F.C.E. [sic] --

25 MS. KANOF: C.F.E.

1 THE INTERPRETER: "C.F.E.," thank you.

2 MR. HANSHEW: This testimony is expert testimony. You
3 have an individual that who's already been identified that he's
4 worked at the C.F.E. till May 2011, but she postdates these
5 documents and is now testifying about the legal meaning of these
6 documents as a lawyer. They provided no notice of an expert,
7 Judge.

8 MS. KANOF: Your Honor, he -- oh, I'm sorry.

9 MR. HANSHEW: He clearly could've contemporarily never
10 been part of this and yet is already starting to opine about
11 what these mean, and this is not information that's the
12 standard, you know, layperson understands. It's only the
13 specialized training as they already built up in his resume in
14 Mexico, Judge.

15 MS. KANOF: First of all, it's not expert testimony.
16 He works for this company and I'm asking definitions to assist
17 the jury. Secondly, he is going to testify about he did meet
18 Mr. Delgado and he did participate in this contract towards the
19 end, and I'm going to ask about policies of C.F.E. I'm not
20 going to ask for any expert testimony or legal interpretation of
21 anything.

22 THE COURT: Well, I'm going to sustain Mr. Hanshew's
23 objection up to now. You can ask another question under what
24 you just told me and that would be fine.

25 If it relates to his time with the C.F.E., that

1 certainly is something he has personal knowledge of and perhaps
2 can tell us about it. But I think he's telling us about
3 something that happened when he wasn't there?

4 MS. KANOF: I asked him to explain what the
5 Fideicomiso is and perhaps he was just too much of a narrative.

6 THE COURT: All right. I guess he answered that
7 question that it was an agreement.

8 BY MS. KANOF:

9 Q. Now --

10 THE INTERPRETER: I'm sorry, Your Honor. Did you
11 want -- the testimony is not being put on the record?

12 THE COURT: No, I'm sustaining Mr. Hanshew's objection
13 at the point he objected. So the remainder of your answer is
14 excluded.

15 BY MS. KANOF:

16 Q. At some point in time, were you asked to investigate what
17 happened with regard to the Agua Prieta II as part of your job
18 with the Agua Prieta contract in this case?

19 A. Yes.

20 Q. By whom were you asked to investigate?

21 A. The Attorney General for the C.F.E.

22 Q. Are you also a custodian of the records of C.F.E.?

23 A. The ones that are related to project development and are of
24 a legal nature, yes.

25 Q. Okay. The employees of C.F.E. that are not management, do

1 they belong it to a labor union?

2 A. Yes. There're two types of employees that are working with
3 the C.F.E. There are those of us that are deemed administration
4 and those that are part of the labor union.

5 THE COURT: Ms. Kanof, if I can just have --

6 Do we need a break?

7 (Jury members nod affirmatively.)

8 THE COURT: Ladies and gentlemen of the jury let's
9 recess for ten minutes. If you'll be back in the jury room in
10 ten, we'll resume our proceedings then.

11 THE COURT SECURITY OFFICER: All rise.

12 (Break at 10:21 a.m. to 10:33 a.m.)

13 THE COURT: Let the record reflect that all members of
14 the jury are present, the United States through its assistant
15 United State's attorneys are present, the defendant and his
16 attorneys are present.

17 At the next break talk amongst yourselves and see if
18 you would be interested in starting at 8:30 rather than 9:00,
19 because I see most of you get here by 8:30. If you want to
20 start earlier we can certainly do that. Talk about it over the
21 break and let us know.

22 MS. KANOF: Your Honor, can we approach the bench?

23 THE COURT: You don't want to start at 8:30?

24 MS. KANOF: I'd love to start at 8:30.

25 THE COURT: We can talk it, about the break.

1 MS. KANOF: It doesn't have anything to do about the
2 time. It has to do with a witness, Your Honor.

3 THE COURT: All right.

4 (Bench conference.)

5 MR. ARREOLA: Your Honor, we'd ask the court to look
6 at Rule 701, the advisory committee notes, because they
7 distinguish between expert testimony and testimony or knowledge
8 that a witness gains by virtue of his or her position in the
9 business. And the government submits that the information we're
10 asking about is not expert, but things he's learned by virtue of
11 being an attorney in the A.G.'s Office at C.F.E. So I'm looking
12 the amendments -- the 2000 amendments to Rule 701.

13 THE COURT: Okay.

14 MR. ARREOLA: And I'm looking at the paragraph
15 beginning with "for example."

16 THE COURT: Is that O'Connor's? What do you have?

17 MS. ARREOLA: The West.

18 THE COURT: I don't know that I have that. Show me
19 where.

20 MR. ARREOLA: Under the 2000 Amendment, sir.

21 THE COURT: 2000. Okay.

22 MR. ARREOLA: The paragraph beginning "for example."

23 THE COURT: Okay. I get that first sentence. I agree
24 with that. No problem.

25 MS. ARREOLA: And then if you'd continue reading to

1 such opinion testimony is admitted, not because of experience,
2 training or specialized knowledge, but because of the
3 particularized knowledge that the witness has by his or her
4 position in the business.

5 THE COURT: All right. So there's a huge difference
6 between testifying as to the value of things which the courts
7 traditionally have allowed people to testify about the value of
8 things, but -- because I'm not sure why that's always been
9 something they do, but to extrapolate from that, then you can go
10 into him testifying about things that are within his expertise
11 as an attorney and those functions there. I don't see how that
12 would make that legal.

13 MR. ARREOLA: There's another example.

14 THE COURT: Okay.

15 MS. ARREOLA: The amendment goes on, for example, to
16 give an example of somebody who is a user of a narcotic and that
17 person was able to testify that they identified a substance as
18 such based on their prior use, but that didn't convert them into
19 an expert. It was simply by virtue of what they had witnessed.

20 THE COURT: Well, the courts just have to decide what
21 they -- they can't talk out of both sides of their mouth,
22 because clearly the rule is if a witness is testifying as an
23 expert based on scientific technical or other specialized
24 knowledge -- that would be, let's see, 702 -- qualified as an
25 expert by knowledge, skill, experience. That guy is an expert

1 in what a drug looks like through his experience and for the
2 courts to then say that the rule will apply in some cases and
3 not others, I don't understand that. To me, if you are an
4 expert because of your experience, then you're an expert because
5 of your experience. I'm not sure why some cases -- what circuit
6 that -- is that a Fifth Circuit or some circuit that doesn't
7 matter to us?

8 MR. ARREOLA: It's an Eighth Circuit case cited under
9 the Advisory Committee notes.

10 MS. KANOF: But it's the Advisory Committee notes.

11 THE COURT: You know, if we're going to have a rule,
12 let's have a rule, but if you're telling me you're an expert
13 because of your knowledge, skill, experience, training or
14 education then that makes you an expert. That makes him an
15 expert. It makes that drug addict an expert because of
16 experience. How they get around it by that, I have no idea.
17 I'm not -- I guess --

18 MR. ARREOLA: Your Honor, the rule does distinguish
19 between Rule 7 -- and there two different rules -- Rule 701, the
20 opinion testimony --

21 THE COURT: Right.

22 MS. ARREOLA: -- and rule 702.

23 THE COURT: Right. And lay opinion and these people
24 can give their testimony based on things that don't require --
25 but not based on scientific, technical or other specialized

1 knowledge. If it's based on one of those three, it takes you
2 out of 701 and takes you to 702, because of expertise based on
3 knowledge, skill, experience or education.

4 MS. KANOF: Judge, here's the problem. Here's why
5 we're here.

6 MR. HANSHEW: The problem is he's an expert. I think
7 we all agreed on that.

8 MS. KANOF: Excuse me. I think I was trying to
9 explain something to the Court.

10 He is an attorney, but the documents in this case deal
11 with C.F.E. policy and he knows about the policy by virtue of
12 him being in the Attorney General's office. It's his job to
13 know about the policies.

14 THE COURT: As long as he's not going to interpret,
15 give us legal meanings and things like that, he can tell us what
16 the function of his job is like anybody else.

17 MS. KANOF: Can he tell you what the function of a
18 document is though? That's the question.

19 THE COURT: If it's going to require --

20 MS. KANOF: Per C.F.E., because what he tells us in
21 pretrialing is this is not -- I'm not telling what you Mexican
22 law is. I am telling you what the policy of C.F.E. was to enter
23 into a contract, what the policy was required to do certain
24 things. And that's different than him saying Mexican law
25 requires this, for example.

1 THE COURT: I got that. If he's talking about things
2 going on within his office, because what's going on in his
3 office, I don't consider that to be expert testimony because
4 then otherwise every human being that comes into court would be
5 an expert. I get that.

6 MS. KANOF: But it's complicated in this case because
7 he's a lawyer.

8 THE COURT: Yeah.

9 MS. KANOF: And him knowing -- part of is is being a
10 lawyer.

11 THE COURT: And there are some exceptions for factual
12 and legal issues that are mixed and whether or not that's
13 expertise, but let's just hear --

14 MS. KANOF: And that's exactly the problem. We're
15 going to have here.

16 MR. HANSHEW: Since we're up to here, I have suspicion
17 that this is leading towards the document route into the
18 investigations of Buendia and these other categories.

19 MS. KANOF: No.

20 MR. HANSHEW: Okay. I just want to make sure we're
21 not going there about what others conclude other people have
22 done or not at C.F.E., their propriety or not. This is a
23 problem we had with those documents translated about the
24 conclusions that he's not going to get into.

25 MS. KANOF: No. No.

1 MR. HANSHEW: Okay.

2 (Bench concludes.)

3 BY MS. KANOF:

4 Q. Okay. Mr. Matamala, I was starting to ask you about the
5 interrelationship between the union and employs of C.F.E. And
6 you started to explain the relative positions of individuals and
7 whether they are in the union or not. Could you explain that
8 please?

9 A. (Spanish.)

10 MR. HANSHEW: This is getting into the discussion
11 about what Mexican law says.

12 THE COURT: You can translate everything up to that
13 point. But not about (Spanish).

14 A. All employees per se are actually employed by the C.F.E.
15 And then we're divided by those that are under specific -- the
16 labor union and those that are deemed administrative employees.

17 BY MS. KANOF:

18 Q. In order to enter into the contract of Agua Prieta II, does
19 the union have input?

20 A. No.

21 Q. Okay. Who is Nereo Vargas?

22 A. Mr. Nereo Vargas is one of the heads of the labor union of
23 the electrical works for the C.F.E.

24 Q. Do you know whether or not Mr. Vargas controls the
25 retirement plan for the union workers?

1 A. I wouldn't know.

2 Q. Okay. Is the union involved in public solicitations to
3 build projects?

4 MR. HANSHEW: Objection, Your Honor. That calls for a
5 legal conclusion.

6 MS. KANOF: I'll rephrase it, Your Honor.

7 THE COURT: Okay.

8 BY MS. KANOF:

9 Q. Was the union involved in the public solicitation for the
10 R.F.P. and input into the solicitation for Agua Prieta II?

11 A. I don't know. I have no knowledge of that. I don't know.

12 Q. In your capacity at C.F.E., at some point in time did you
13 get involved with the Agua Prieta II project?

14 A. Yes. At the point where the C.F.E. became aware that the
15 project was not moving forward as expected, then the general
16 counsel was brought in in order to try to recuperate the
17 turbines so the project could then move forward.

18 Q. Where is Agua Prieta?

19 A. It is to the north of the state of Sonora in Mexico.

20 Q. How big is it?

21 A. It's a very small city.

22 Q. Did it need a new power generation plant?

23 A. Well, Agua Prieta per se on its own perhaps, but I'm not
24 aware, but the state of Sonora that, is to say the whole
25 northern part of the country, did need this power plant.

1 Q. Okay. And do you -- do you remember when it was that you
2 got involved with the Agua Prieta II contract?

3 A. I became aware of the project in December of 2011.

4 Q. What was the first thing you did with regard to it?

5 A. The first time that I became involved with this project was
6 when the general counsel requested that I accompany him to a
7 meeting around the middle of December of 2011 between F.G.G. and
8 C.F.E. in order to come to an agreement in order to make the
9 project move forward.

10 Q. Okay. And where was that meeting?

11 A. That meeting took place in the offices of C.F.E. and the
12 office of finance project -- finance projects department.

13 Q. For C.F.E., who was at the meeting?

14 A. (Spanish.)

15 Q. Let me do it one by one.

16 Who is Ingeniero Laris?

17 A. He was the head -- he was the director of finance projects
18 for that department.

19 Q. Who else?

20 A. And then we had Alberto Ramos. He was the deputy director
21 of construction projects under the same department of financed
22 projects.

23 Q. Okay. And who else was there for C.F.E.?

24 A. And we also have engineer Ramon Fernandez.

25 Q. What was his role?

1 A. He was the coordinator for projects of thermo electricity
2 under the finance department.

3 Q. And was there anybody else under C.F.E.?

4 A. And then the general counsel and myself.

5 Q. For F.G.G., who was present?

6 A. Mr. Marco Delgado.

7 Q. Was Fernando Gireud there?

8 A. No.

9 Q. Have you ever met Fernando Gireud?

10 A. No.

11 Q. Was Mace Miller there?

12 A. No.

13 Q. Have you ever met Mace Miller?

14 A. No.

15 Q. Would you recognize Mr. Delgado if he were here in the
16 courtroom?

17 A. Yes.

18 Q. Could you indicate where he is? If I said this was number
19 one, that was number two and that was number three at this
20 table, which number is he, if any?

21 A. Number two.

22 MS. KANOF: Government asks that the record reflect
23 that the witness has identified the defendant.

24 THE COURT: Mr. Hanshew?

25 MR. HANSHEW: No, objection.

1 THE COURT: The record will so reflect.

2 BY MS. KANOF:

3 Q. Was there a technical person from F.G.G. present at the
4 meeting?

5 A. Yes, Ramon Fernandez.

6 Q. Was he there for F.G.G.?

7 A. No. He was a C.F.E. representative.

8 Q. Okay. Was there anyone from F.G.G. that was from a
9 technical side?

10 A. No. The only one that I remember would be Mr. Marco
11 Delgado.

12 Q. What was the major concern for the meeting?

13 A. That the meeting was held because there were communication
14 problems between F.G.G. and C.F.E. The representative from
15 C.F.E. argued that the representative from F.G.G. was not
16 answering their communications, was not paying attention to
17 them, was not providing documents related to the project.

18 Q. Was there something particular going on with the project as
19 a result of that lack of communication?

20 A. Well, the project was starting to fall behind schedule and
21 it was not clear that it would be completed and that is why we
22 were called in.

23 Q. Okay. And what happened at the meeting?

24 A. Well, there were back and forth discussions mainly between
25 Marco Delgado and Ramon Fernandez, and they just could not come

1 into an agreement as to why there was a breakdown in
2 communication. Finally it was decided that Alberto Ramos would
3 take responsibilities for communications between F.G.G. and
4 C.F.E.

5 Q. Okay. So what was Mr. Ramos' role in this project prior to
6 this meeting?

7 THE INTERPRETER: Prior to this meeting?

8 MS. KANOF: Prior to this meeting.

9 A. Well, Alberto Ramos was actually head of the technical
10 area. When it came time to do the assessment when they put the
11 project out to bid for Agua Prieta for the manufacturing of the
12 turbines, he is the one that approved the request for the bids
13 that eventually F.G.G. won through the bidding process and he
14 was granted the project for the building of the turbines for
15 C.F.E.

16 BY MS. KANOF:

17 Q. Okay. So I'm not sure I understand what role he actually
18 played. He approved the bid? Is that what he did, Ramos?

19 A. Yes. He approved a portion, the technical aspects of it.

20 Q. And once a bid is in place, who at C.F.E. takes over?

21 A. (Spanish.)

22 MR. HANSHEW: Your Honor, there's additional questions
23 being asked.

24 THE COURT: She's clarifying what he said.

25 MR. HANSHEW: I didn't quite hear.

1 THE COURT: So she can interpret what he said.

2 A. C.F.E. then takes over the processing of the contract,
3 finalizing the contract for the Agua Prieta project. And since
4 this is a thermal electric project then they have to coordinate
5 this. So this then falls into the care of the C.P.T. [sic], the
6 coordinators for thermal projects.

7 BY MS. KANOF:

8 Q. Would that be what's called a project manager?

9 A. Yes. The project administrator of the thermal electric
10 projects, yes, that would be the one in charge of this project.

11 Q. And at the December 2011 meeting, was that Mr. Fernandez?

12 A. Yes.

13 Q. Are you aware of what Mr. Delgado does for a living?

14 A. Now?

15 Q. Is he an attorney?

16 A. Well, I just met him as a representative for F.G.G.

17 Q. Okay. Was anybody from Mitsubishi there at this meeting?

18 A. No.

19 Q. And the -- were there any technical issues being discussed
20 at this meeting?

21 A. No. No, it was an exclusive meeting between C.F.E. and
22 F.G.G.

23 Q. How is communication usually coordinated once a project
24 gets going?

25 A. Well, the contract specifies that the communication would

1 be between a representative from C.F.E. and contractor, the
2 provider that is granted the bid, a representative from them.

3 Q. Okay. The technicians, do they usually talk to each other
4 directly?

5 A. Yes, constantly.

6 Q. Okay. And was that happening in this case?

7 A. Yeah, there were several meetings where there were
8 discussions about the technical aspects between the technical
9 people and the C.F.E.

10 Q. With regard -- do you know what -- was there any discussion
11 about anchors at this meeting?

12 A. Actually, there was no discussion about the anchors, not
13 for the meeting at December. That was actually discussed at
14 other meetings at another time, but not at the December meeting
15 was there a discussion about the anchors.

16 Q. When was the next meeting that you attended?

17 A. That would be approximately February of 2012.

18 Q. And where was that meeting held?

19 A. That was also at the office of finance projects.

20 Q. And who was at that meeting?

21 A. On behalf of the C.F.E., we had Engineer Laris, Engineer
22 Alberto Ramos, the general counsel, Mr. Marco Delgado, and then
23 we had Mr. Burgueño on behalf of Mitsubishi. There was another
24 individual from Mitsubishi, but I do not recall their name. And
25 I was present as well.

1 Q. Mr. Burgueño, by that time was an attorney for Mitsubishi
2 in Mexico; is that correct?

3 A. Yeah, by that time Mr. Burgueño was part of a group of
4 attorneys, Von Wobeser y Sierra, on behalf of Mitsubishi.

5 THE COURT: Could we get a spelling of that, because
6 for the record --

7 MS. KANOF: Yes, absolutely.

8 Sorry, Kathi.

9 THE WITNESS: V-O-N B-E-B-B-E-R [sic].

10 THE COURT: Where is the Fon (phonetic)? Where is the
11 Fon in all of this? Is it F-O-N or V-O-N?

12 THE WITNESS: B- [sic] -O-N.

13 MS. KANOF: Is that the name of the law firm?

14 THE COURT: Hold on.

15 THE INTERPRETER: It's a German name of the law firm
16 that would be -- I'm sorry -- V-O-N B-O-B-E-C-E-R [sic].

17 THE COURT: You said V-O-N, as in Von?

18 THE INTERPRETER: As in Victor, yes, Your Honor.

19 MS. KANOF: That's the German name of the law firm
20 that Mr. Burgueño was with.

21 A. It's the German firm, yes.

22 BY MS. KANOF:

23 Q. Okay. All right.

24 So this was held again at C.F.E., correct?

25 A. That's correct.

1 Q. And why did you have to have a second meeting?

2 A. Well, by the beginning of February, we received some
3 communications from Emilio [sic] Burgueño indicating that F.G.G.
4 had pledged on behalf of Mitsubishi some property that did not
5 belong to F.G.G., and it was not valid because Mitsubishi was
6 the actual owner of the turbines that were pledged.

7 Q. And what was the purpose of the meeting once you received
8 that information?

9 A. Well, mainly what we wanted to determine was whether this
10 was actually the case, whether Mitsubishi had pledged or not
11 pledged these projects -- these turbines and mainly for the
12 project to move forward.

13 Q. Had Mr. Delgado provided you with some inventory numbers
14 for the turbines?

15 A. No.

16 Q. No? Okay.

17 The purpose of the meeting, did you proceed -- did you
18 discuss this pledge issue?

19 A. Well, yes, this pledge was discussed, but we really didn't
20 come to any type of conclusion. What ended up being offered
21 was -- F.G.G. was now offering to substitute this pledge to
22 C.F.E., wherein they had previously pledged these turbines.

23 Q. What were they going to substitute it with?

24 A. They were offering a bond from F.G.G. and this would be
25 provided to C.F.E.

1 Q. C.F.E.?

2 A. C.F.E. within a 10- to 15-day period.

3 Q. Who made that offer?

4 A. Mr. Marco Delgado.

5 Q. What was the dollar amount of the bond that Mr. Delgado
6 offered within 10 to 15 days?

7 A. What we were requesting is a guarantee in the amount of
8 \$20 million, which was the original amount, in addition to the
9 \$34 million that were provided as a down payment.

10 Q. What \$34 million are you talking about as a down payment?

11 A. I believe that it was in 2010, where the trust granted
12 F.G.G., and I correct myself, it was \$32 million as a down
13 payment for delivery of the turbines.

14 Q. I draw your attention to what's been marked as Government
15 Exhibit 21.

16 And it's -- do you recognize this document?

17 THE INTERPRETER: I'm sorry, could you run it?

18 MS. KANOF: Oh, okay.

19 THE INTERPRETER: He can't see it. I'm sorry.

20 MS. KANOF: Okay.

21 BY MS. KANOF:

22 Q. Now? Can you see it now?

23 A. Yes, but -- I don't know if I could please see the whole
24 document.

25 Q. In the notebooks next to you, it's number 21. It would be

1 in book one. You can put that in front of you.

2 Do you know what that is?

3 A. No.

4 Q. Okay. What language does it appear to be in?

5 A. English.

6 Q. In it, it says, requested for use in Mexico?

7 MR. HANSHEW: Object to leading, Your Honor.

8 THE COURT: Well let me hear the question.

9 MS. KANOF: Yes.

10 The part that I've highlighted in yellow, could the
11 court reporter [sic] just translate that line to him and then
12 I'll ask questions about it. It's in evidence.

13 MR. HANSHEW: He already said we knew it's in English.
14 She's going to have to translate it in Spanish, but that's not
15 what this document is. He said he doesn't know it because --

16 THE COURT: Ms. Kanof is asking her to translate the
17 part of the document that's highlighted in yellow. It's already
18 in evidence, so what's your objection?

19 MR. HANSHEW: Objection leading on this. You're
20 leading the witness' conclusion about this, Judge.

21 THE COURT: I'll overrule that objection.

22 BY MS. KANOF:

23 Q. Okay. Do you -- does C.F.E., as a policy, require a
24 document like this for a letter from someone?

25 A. What is required by C.F.E. is a document indicating that a

1 person is authorized to represent -- to represent on behalf of
2 another entity.

3 Q. Okay. And here in Spanish, what does that say?

4 A. You --

5 THE INTERPRETER: You want it interpreted?

6 MS. KANOF: It's in Spanish, so it doesn't need to be
7 interpreted.

8 A. The Hague convention of October 5th of 1961.

9 BY MS. KANOF:

10 Q. The Hague convention? Is that a document -- does C.F.E.
11 policy require a document under the Hague Convention of 1961 to
12 consider a letter legitimate?

13 MR. HANSHEW: Objection, Your Honor. This is an
14 expert --

15 THE COURT: Sustained.

16 MS. KANOF: Can we just have the "no"?

17 THE INTERPRETER: "No."

18 THE COURT: Yes, you can have the "no."

19 BY MS. KANOF:

20 Q. And at the top, the State of Texas and the Secretary of the
21 State of Texas, that's not in Mexico City, isn't in the State of
22 Texas, correct?

23 A. Yes.

24 Q. I'm sorry? I forgot my question.

25 At the top of this document, there's a word that's

1 something in Spanish. At C.F.E., do they have a stamp that has
2 that word?

3 A. Yes, the word "cotejado," verified, yes.

4 Q. Well, does it usually have the word "notario" under the --
5 when C.F.E. uses it?

6 A. No. No, just verified.

7 Q. At some point in time are you aware that the Department of
8 Justice made a request under the Mutual Lateral Assistance
9 Treaty for evidence?

10 A. No.

11 Q. You were not prepared of making documents in response to
12 that request?

13 A. No.

14 Q. Scrolling down again, before you -- if you want to -- under
15 that same tab, there's a tab --

16 MS. KANOF: If he needs to look that tab.

17 THE INTERPRETER: What number is that?

18 MS. KANOF: 21.

19 BY MS. KANOF:

20 Q. Okay. Again we see that "contejado nortario 103," is that
21 a stamp of C.F.E.?

22 A. No.

23 Q. Have you ever seen this letter before?

24 A. Yes.

25 Q. When did you see it for the first time?

1 A. I would say more or less at the end of February or
2 beginning of March when we tried to integrate all of the
3 documents for the contract for F.G.G.

4 Q. And where did you find it?

5 A. We requested it from the department of finance projects.
6 It was part of the record of the contract.

7 Q. And do you know -- at the meeting that you were at in
8 February, did -- was this document discussed?

9 A. No, we didn't talk about this document.

10 Q. So at that time you hadn't seen this document?

11 A. No.

12 Q. And Mr. Delgado didn't bring a copy and show it to you
13 then?

14 A. No.

15 Q. In fact, if you look at the bottom of the document, what is
16 the alleged date of that big signature?

17 A. June 30th of 2012.

18 Q. And this meeting was in February of 2012?

19 A. Correct.

20 Q. I'm going to show you what's been marked, but not admitted
21 into evidence.

22 MS. KANOF: If you can show him the next tab, please,
23 22.

24 BY MS. KANOF:

25 Q. Do you recognize this document?

1 A. Yes.

2 Q. When did you first see this document?

3 A. Likewise, approximately the end of February beginning of
4 March of 2012.

5 Q. And where was that document found?

6 A. This was also provided to us by the department of finance
7 projects.

8 Q. Of C.F.E.?

9 A. Correct.

10 MS. KANOF: We move admission of Government's Exhibit
11 Number 22 into evidence.

12 THE COURT: Mr. Hanshew?

13 MR. HANSHEW: No, objection, Your Honor.

14 THE COURT: Okay. GX-22 is admitted.

15 BY MS. KANOF:

16 Q. Okay. Now, you didn't -- had you seen this letter when you
17 were at that meeting?

18 A. No.

19 Q. And have I asked you to look at these two documents and
20 compare them to each other when we were discussing this case?

21 A. Yes.

22 Q. Are they different?

23 A. Yes.

24 Q. Do they have the same date?

25 A. No.

1 Q. Look at the two documents, 21 and 22. If you need to take
2 them out of the binder to hold them side by side, that's fine.

3 Okay. Do they have the same date?

4 A. Yes.

5 Q. And are they both addressed or copied to Eduardo Buendia?

6 A. Yes.

7 Q. Who is Eduardo Buendia?

8 A. Okay. Mr. Buendia is -- well, actually, he was the head or
9 the director of the production of foreign energy, also, under
10 the department of finance projects.

11 Q. The Director of Foreign Energy. Is he an engineer?

12 A. Well, he's not the head. He's actually just a manager.

13 Q. If someone were to commit to pledge equipment in lieu of a
14 letter of credit, who would they address that commitment to?

15 A. That would be to the head of financed projects.

16 Q. Which is who?

17 A. Eugenio Laris.

18 Q. He's not on any of these letters, is he?

19 A. Yes, that's correct. He does not appear.

20 Q. Is this letter sufficient to pledge
21 \$100-million-plus-equipment in lieu of letters of credit?

22 A. No.

23 Q. Looking at the two letters, what is -- let's look -- I want
24 you to look side by side at the first paragraph.

25 THE COURT: I just want to clarify something for the

1 record. Is it \$1 million or \$100 million?

2 MS. KANOF: \$100 million is what I asked?

3 THE INTERPRETER: I stand corrected, Your Honor. It's
4 100 million, according my notes.

5 THE COURT: Right.

6 THE INTERPRETER: But that's not what I put on the
7 record.

8 THE COURT: Right. No, I heard it in Spanish, but by
9 the time it got up here it was one. I wanted to make sure it
10 was clear.

11 BY MS. KANOF:

12 Q. \$100 million worth of equipment.

13 If you look at the two documents side by side, you
14 don't -- do you speak English?

15 A. Yes, a little.

16 Q. Enough to read this paragraph in English and understand it?

17 A. Yes.

18 Q. If you could take a look at the first paragraph in each and
19 then I'll ask you a question.

20 A. Correct.

21 Q. Okay. Are they the same?

22 A. Well, yeah, I suppose they are. Yes, they would be.

23 Q. Let me just draw your attention to this particular
24 sentence.

25 No material changes has been made to the draft of the

1 pledge agreement.

2 MR. HANSHEW: Objection, leading. Why doesn't she
3 have him read it like the other witnesses if he understands it.

4 THE COURT: What's leading about it? She's drawing
5 his attention.

6 MR. HANSHEW: She's reading what it is.

7 THE COURT: It's in evidence.

8 MR. HANSHEW: The question is if he understands or not
9 what it is.

10 THE COURT: It's in evidence. She can read it if she
11 wants.

12 Let me hear your question. What's the question?

13 MS. KANOF: I was going to ask if he knew about the
14 inspections.

15 THE COURT: That are referred to in the letter?

16 MS. KANOF: Yes.

17 THE COURT: I'm going to overrule the leading
18 objection.

19 BY MS. KANOF:

20 A. Yes, I was aware that they were going to have inspections,
21 yes.

22 Q. According to this letter, there was a draft of the pledge
23 agreement prepared by C.F.E. prior to the inspections; is that
24 correct?

25 A. I wouldn't know. I suppose there would be, but I don't

1 know it.

2 Q. Okay. The second paragraph, if you could look at the two
3 paragraphs on the second paragraph in each and again for the
4 purpose of seeing whether they are the same.

5 A. Correct.

6 Q. Okay. Going back to Government Exhibit Number 21, just the
7 letter portion, is there a third paragraph?

8 A. There's one missing.

9 Q. Number 21?

10 MS. KANOF: I'm sorry. Go ahead.

11 A. Yes, there's one missing.

12 BY MS. KANOF:

13 Q. There's one missing? Okay.

14 With regard to number 22, Exhibit 22, at that meeting,
15 did Mr. Delgado discuss a parental -- some kind of parental
16 guarantee instead of the pledge and letters of credit by
17 Mitsubishi Heavy Industries of Japan?

18 A. No. They never spoke of any said change in guarantees on
19 behalf of C.F.E. It was not ever discussed whether there ever
20 was a guarantee between F.G.G. and Mitsubishi. Mitsubishi
21 always indicated that there was not. So F.G.G. then offered
22 C.F.E. a substitution for guarantee of the -- the pledge that
23 was in dispute.

24 Q. What are the difference between the two letters? Do you
25 see the signature on both letters?

1 A. Yes.

2 Q. And is there a big space between Exhibit 22 that does not
3 exist in Exhibit 21, between the signature and the title of the
4 individual allegedly signing it?

5 A. Yes.

6 Q. So you said that when you called for records from the
7 finance department, you found both of these letters; is that
8 correct?

9 A. Yes. First I received one and a few days later I received
10 the other.

11 Q. What do you mean? Who do you receive -- why didn't you get
12 them at the same time?

13 A. Well, when we initially requested -- made our first request
14 through the first search when we received the first letter.
15 Then subsequently there was another request and we received a
16 different letter, and at that time was when the general counsel
17 made a request to the finance department to please provide both
18 documents in order to determine and to certify which one was the
19 correct one.

20 Q. And again, back to 21, is there anyone at C.F.E. that is
21 notario 103?

22 A. No.

23 Q. So after -- okay, so -- now you're at the second meeting
24 and Mr. Delgado has made this second promise, correct?

25 A. Yes. At that moment he did offer this as a guarantee.

1 Q. Who offered that as a guarantee?

2 A. Mr. Marco Delgado was offering it to C.F.E.

3 Q. The letter?

4 A. No, the bond.

5 Q. Sorry.

6 I'm going to hand you what's been marked Government
7 Exhibit Number 31. Have you seen this document before?

8 A. Yes.

9 Q. When did you see this document?

10 A. Well, it was shown to us at the moment that we were told
11 that they had requested from Mr. Marco Delgado proof of him
12 being an authorized representative to be able to pledge.

13 Q. When a letter is written about a specific project, does it
14 carry a number?

15 A. Yes. Because C.F.E. is actually a government entity, we
16 are obligated to number all documents that are remitted from
17 that office and these are the ID numbers.

18 Q. Okay. Would it ever happen that the same letter or that
19 two different letters would have the same number on them?

20 A. No. Each document has to carry its own identification
21 number.

22 Q. Okay. What is the identification number?

23 MS. KANOF: Well, first of all, we'd move Government's
24 Exhibit 31 into evidence.

25 THE COURT: Mr. Hanshew.

1 MR. HANSHEW: No, objection.

2 THE COURT: GX-31 is admitted.

3 BY MS. KANOF:

4 Q. Okay. And now again this letter appears to have been
5 written in May of 2012; is that correct?

6 A. Correct.

7 Q. Okay. And I'm going to ask you to read the last to your
8 self, the last line.

9 And who was this letter written by?

10 A. Alberto Ramos Elorduy.

11 MS. KANOF: And we'd also move Government's Exhibit
12 31A, the English translation.

13 MR. HANSHEW: No, objection, Your Honor.

14 THE COURT: GX-31A is admitted.

15 BY MS. KANOF:

16 Q. And the last line, does it read: It is worth mentioning
17 that when Mr. Adams was in Mexico on that date, he delivered the
18 corresponding copy to C.F.E.

19 Is that what it says?

20 A. Yes.

21 Q. And it is referring to the official letter dated
22 January 10th of 2010. Is that the date he's referring to that
23 Mr. Adams was in Mexico City?

24 A. Yes.

25 Q. Are you aware that January 10th of 2010 was a Sunday?

1 MR. HANSHEW: Objection. Leading, Your Honor.

2 THE COURT: Sustained.

3 MS. KANOF: I'll ask the Court to take judicial notice
4 that January 10, 2010, was a Sunday.

5 THE COURT: January what?

6 MS. KANOF: January 10th of 2010.

7 THE COURT: Based upon the calendar embedded in my
8 computer, January 10th of 2010, is a Sunday.

9 MS. KANOF: And would the Court take judicial notice
10 based on the calendar in your computer?

11 THE COURT: Mr. Hanshaw, did you want an opportunity
12 to challenge that?

13 MR. HANSHEW: The question was not about the -- what
14 the Court's calendar said. The question is what he knew that
15 date was.

16 THE COURT: Right. Now she's asking the Court to take
17 judicial notice. I have to give you an opportunity to challenge
18 that.

19 MR. HANSHEW: No, objection.

20 THE COURT: The Court will take judicial notice that
21 the date was Sunday.

22 BY MS. KANOF:

23 Q. Is C.F.E. open on Sundays?

24 A. No.

25 Q. Okay. So when Mr. Delgado offered the performance bond,

1 was that offer accepted by C.F.E.?

2 A. Well, they accepted the change so long as the project was
3 completed.

4 Q. Okay. And did Mr. Delgado -- in ten days, did he provide
5 that performance bond?

6 A. No.

7 Q. Did Mr. Delgado provide that performance bond in 15 days?

8 A. No.

9 Q. Did you also discuss -- did Mr. Delgado tell you that
10 F.G.G. had a contract with Mitsubishi for the pledge in order to
11 pledge the equipment?

12 A. No, he never indicated that to me.

13 Q. Was the assignment of collection rights also discussed at
14 that meeting?

15 A. During the meeting, one of the main points of discussion
16 were the collection rights wherein F.G.G. was going to grant
17 these collection rights to Mitsubishi, but F.G.G. at no point
18 accepted giving up all collection rights until a certain amount
19 was paid out upon delivery of the anchors to C.F.E.

20 Q. Well, wait a minute. Who was there for F.G.G.?

21 A. Marco Delgado.

22 Q. Anyone else?

23 A. No.

24 Q. Okay. And so did Mitsubishi bring up the fact that they
25 wanted assignment of collection rights?

1 A. I don't recall per se who it was that initially brought up
2 the topic, but I do you recall this was extensively discussed
3 during the meeting between F.G.G. and Mitsubishi as to these
4 collection rights.

5 Q. Okay. And had -- what did Mitsubishi want?

6 A. What F.G.G. wanted was -- no, Mitsubishi wanted -- what
7 Mitsubishi wanted was for F.G.G. to give up the rest of its
8 collection rights so that they could bring the turbines to
9 C.F.E. in Agua Prieta II.

10 Q. And what did Mr. Delgado want?

11 A. What Mr. Delgado wanted was -- I don't recall whether it
12 was 5 million or \$500,000, but he also wanted as a down payment
13 1.6 million in order to bring the anchors for the turbines to
14 Agua Prieta.

15 Q. What did that have to do with the collection rights?

16 A. Well, the collection rights come into play because C.F.E.
17 would be paying for the turbines per the contract. F.G.G. would
18 be paid fees directly, whereas if the collection rights were
19 granted, then Mitsubishi would get paid directly in virtue of
20 these collection rights.

21 Q. So Mr. Delgado wanted money from whom before he would agree
22 to the assignment of collection rights to Mitsubishi?

23 A. For C.F.E. to pay for the transportation of the anchors in
24 addition to the sum of money before they would grant collection
25 rights to Mitsubishi.

1 Q. Up unto this point had Marco Delgado facilitated collection
2 rights directly to Mitsubishi from C.F.E. at all?

3 A. No, because C.F.E. had not received any type of
4 notification and therefore they were paying directly to F.G.G.

5 Q. Okay. I draw your attention to page 12 of Government's
6 Exhibit 18, the prime contract in Spanish, between the
7 Fideicomiso and F.G.G. assignment?

8 A. Yes.

9 Q. What part of this -- does this have anything to do with
10 collection rights?

11 A. No not at all.

12 Q. Okay. So pursuant to the original contract, where was
13 C.F.E. or the Fideicomiso supposed to send the money?

14 A. Well, according to this contract, these were supposed to be
15 deposited into a Wells Fargo account as indicated in the
16 original contract as payments of the funds owed to F.G.G.

17 Q. While we're still on this page, what is an "el proveedor."

18 A. The proveedor would be the individual that won the bid and
19 in this case it's F.G.G.

20 Q. Is there a difference between a proveedor and I'll say it
21 in English, a builder, somebody who constructs something?

22 MR. HANSHEW: Objection, Your Honor. Expert
23 testimony.

24 MS. KANOF: I'll just show him the document, Judge.
25 I'll withdraw the question.

1 BY MS. KANOF:

2 Q. Okay. So the money should have gone to the Wells Fargo
3 bank, correct?

4 A. It should have been done so that way, yes.

5 Q. Okay. And I'm going to show you what's been marked and
6 admitted in evidence as Government Exhibit Number 43.

7 Have you seen this document before?

8 A. Yes.

9 Q. What is it?

10 A. This would be a document by which an F.G.G. representative
11 is requesting from Ramos Elorduy to change the place where the
12 payments would be sent to as part of the collection rights for
13 the turbine contract.

14 Q. So this document is a request for modification to
15 collection rights?

16 A. No.

17 Q. What is it again then?

18 A. Well this document actually seems to have a contradiction
19 wherein it is being requested that a modification to the
20 contract to the place where the payments are being made to -- be
21 made, but in effect it is changing the person to whom the
22 payments are being made and actually there's a reference here
23 within this same document wherein they are changing the person
24 whom the payments are being done to instead of F.G.G.

25 The contract has a means by which they can waive the

1 collection rights, and by this means they would give these
2 collection rights to a third party. But this is very different
3 than asking to -- for a modification for the contract itself.

4 Q. Okay. So this is not a modification of the contract?

5 A. No, it's not a modification to the contract. If it were
6 anything it would be a waiver of the -- or the signing of
7 collection of rights to somebody else.

8 Q. And would that be Skippings and Rutley, who it would be
9 assigned to?

10 A. Yes, that's correct. That would be the person that the
11 collection rights would be granted to.

12 Q. Do you know who Skippings Rutley is?

13 A. I heard that perhaps it was a law firm, but that was just
14 hearsay. I wouldn't be sure.

15 Q. Were they included in any of the Agua Prieta contracts as
16 having a right to receive this money?

17 A. No.

18 Q. Now with regard to who it's addressed to, if you are going
19 to change -- first, if you were going to modify the contract,
20 who would that modification go to?

21 MR. HANSHEW: Your Honor, objection. Expert
22 testimony.

23 MS. KANOF: I'm asking policy at C.F.E., who it has to
24 go to.

25 THE COURT: Overruled.

1 A. The contract administrator.

2 BY MS. KANOF:

3 Q. Which was who?

4 A. At that time it would be Ramon Fernandez that -- which
5 would be the project coordinator.

6 Q. Okay. And that Mr. Ramos would not have been the proper
7 person to modify the contract?

8 A. Correct, he wouldn't be.

9 Q. And if this was a change of collection rights to somebody
10 who is not in privy to the contract, what is the policy at
11 C.F.E. as to who would have to make that decision?

12 A. Well, this request to actually come by a notification
13 through a public -- notary public to the finance department at
14 C.F.E. From there, it would then go to the general counsel's
15 office for approval. And upon approval, the collection rights
16 would be assigned.

17 Q. Okay. And Mr. Ramos is not in that -- is Mr. Ramos in that
18 chain?

19 A. No.

20 Q. I show you what's been marked as Government's Exhibit, and
21 admitted into evidence as and Government's Exhibit Number 49 --
22 well, I'll open 50, first.

23 I'm going to first show you Government's Exhibit
24 Number 50 -- oh, 49. I was trying do it chronologically
25 correct.

1 And you had previously talked about unique numbers for
2 each letter. Do you recall that?

3 A. Correct, yes.

4 Q. Okay. Drawing your attention to Government Exhibit
5 Number 49, what is the date that this letter appears to have
6 been written in?

7 A. March 23rd of 2010.

8 Q. And what is the unique number of the letter for this
9 project?

10 A. That would be F.T. back slash 019 back slash 2010.

11 Q. Is the relevant number the 19?

12 A. Yes.

13 Q. And in your collection of documents, do you recognize this
14 letter?

15 A. Yes.

16 Q. And if you want to look at the whole document -- I'm going
17 to ask you to compare 49 and 50. I don't know if they're in
18 notebook one. They might be in notebook two. If you want to
19 take a look and pull them out.

20 MS. KANOF: Go ahead and pull it out so he can stay in
21 front of the screen and microphone, please.

22 One will have an e-mail on the front. It's not
23 just letter by itself. Just those two exhibits.

24 THE INTERPRETER: There's just a letter, 49.

25 MS. KANOF: That's fine. And 50 should have like a

1 couple of different documents with the letter at the end or I
2 can put 50 up in the screen.

3 BY MS. KANOF:

4 Q. Okay. Do you have before you 49? And then if you page
5 through 50, if you'll come to the letter in 50.

6 A. Yes.

7 Q. So let's start with number 49. It's letter number 19,
8 correct?

9 A. Correct.

10 MS. KANOF: We move admission of Government's Exhibit
11 Number 49 into evidence.

12 MR. HANSHEW: No, objection.

13 THE COURT: GX-49 is admitted.

14 BY MS. KANOF:

15 Q. And who -- whom is it addressed?

16 A. Mr. Marco Delgado.

17 Q. But it does address him by attorney, correct?

18 A. Yes. It does say Attorney Marco Delgado, that's correct.

19 Q. Who is it signed by?

20 A. Eduardo Buendia Dominguez.

21 Q. And before we were talking about this kind of stamp, is
22 that what the C.F.E. "contejado" stamp looks like?

23 A. Yes. They were stamped on certified copies.

24 Q. Okay. Now, if you could just read this to yourself so that
25 we can discuss what this letter is about.

1 A. I'm ready.

2 Q. Okay. What is it about?

3 A. This is a payment schedule. It's actually an extract from
4 a payment schedule between the trust and F.G.G. for payment of
5 the turbines.

6 Q. Okay. And the date is the 23rd of March, correct?

7 A. Yes.

8 Q. Is it -- what would be the purpose -- what was
9 Mr. Buendia's position again? What was his action in this
10 contract?

11 A. At that time he was the Deputy Director of Foreign Energy
12 Producers.

13 Q. Okay. And why would he be sending Mr. Delgado a letter
14 that has the agreed payment terms between C.F.E. and F.G.G. in
15 it?

16 A. Well, I don't know per se, but this is a very common
17 practice where a summary of the main contract is shared among
18 the parties and I suppose this is the purpose of this letter,
19 but I wouldn't know.

20 Q. Okay. Well is it also a practice for the payment schedule
21 to be incorporated into the prime contract with an annex?

22 A. Yes, it's indispensable that this annex be included.

23 Q. Government's Exhibit Number 19, which has been admitted
24 into evidence, do you recognize that as Anexo S?

25 A. (Nodding head.)

1 Q. You have to speak, so she can --

2 A. Yes, I do recognize it.

3 Q. Okay. And then is this also a schedule of payments for the
4 project?

5 A. Correct, yes.

6 Q. Okay. And if you could just look at letter number 19 from
7 the 23rd of March and Anexo S, and I will ask you, the first
8 payment, was it supposed to be \$20 million?

9 A. Yes.

10 Q. And was the second payment per Anexo S and that letter,
11 \$12 million?

12 A. Yes.

13 Q. Now let me show you Government Exhibit 50.

14 Government Exhibit Number 50, let me just show you
15 that it's 50 -- starts with an e-mail; is that correct?

16 A. Correct.

17 Q. And do you recognize the date as being March 25th, two days
18 after that letter from Mr. Buendia?

19 A. Yes.

20 Q. And is it an e-mail from Mr. Delgado?

21 A. Yes.

22 Q. And is it to -- first, is it to John Adams?

23 A. That's correct.

24 Q. Do you know who John Adams was?

25 A. Yes.

1 Q. Who was he?

2 A. We were told that he worked for Mitsubishi Power Systems
3 America and he was the project head.

4 Q. Okay. I'm going to put it in English, because he writes it
5 in Spanish, is this -- this is the same letterhead. It's also
6 to F. Gireud and Mace Miller. And you said you never met them,
7 correct?

8 A. Correct, I don't know them.

9 Q. Okay. But does it say, attached please find C.F.E.
10 confirmation of revised payment plan? Does it say that?

11 A. That's correct, yes.

12 Q. And does it say, this allows us to proceed with the
13 assignment of collector's rights prior to the issuance of the
14 first payment?

15 A. That's correct, yes.

16 Q. First of all, did you know that on March 25th, the first
17 payment had already been issued two weeks prior?

18 A. Well, I didn't know that.

19 Q. But with the assignment of collection rights, did you tell
20 this jury that that was still being discussed at that meeting of
21 2012?

22 A. Yes, up to that date, but in fact that was never signed.
23 The assignment of collection rights was never signed.

24 Q. And that never happened?

25 A. No.

1 Q. Okay. Now I've scrolled down to the attachment to that
2 e-mail. And if you would look at it, part of Government's
3 Exhibit Number 50, and if you could have next to you
4 Government's Exhibit Number 49. Okay.

5 First of all, are they the same date?

6 A. Yes.

7 Q. Are they the same letter number 19?

8 A. Yes.

9 Q. Now, I'm going to ask you again to read and compare the
10 first paragraph and tell me if the letters are the same, if the
11 content of the first two paragraphs of 49 and 50 are the same?

12 A. Yes.

13 Q. And let's skip the chart for a second, but look at the next
14 paragraph and tell me if it is the same in 49 as it is in 50?

15 A. Yes.

16 Q. And the last paragraph?

17 A. Yes.

18 Q. Okay. Going back briefly to number 49, at the bottom of 49
19 there's something handwritten. What is that?

20 A. This is a verification or receipt. The person whom this is
21 addressed to signs on it.

22 Q. So this would have been handed over, physically handed over
23 to the person who signed it as receipt?

24 A. Yes.

25 Q. Okay. And it's kind of faint, but can you read what it

1 said underneath that signature?

2 A. It says, receive 30 -- that's actually would be the date of
3 March 30th of 2010.

4 Q. So the person that is writing this would have been handed
5 this document on the 30th of March; is that correct?

6 A. Yes, correct.

7 Q. On Government's Exhibit Number 50, do you see any
8 indication that was received?

9 A. No.

10 Q. However, is everything else on the letter, including the
11 letter number 19 and the date, identical?

12 A. Actually, the table, they're not alike as far as the table.
13 The amounts differ from one document to another.

14 Q. So let's look at the table. The table on Government's
15 Exhibit Number 50 that was part of the e-mail, instead of
16 \$20 million, what does it say?

17 A. 15.

18 Q. And instead of \$12 million?

19 A. 7.

20 Q. So the chart in the two are different; is that correct?

21 A. Correct, yes.

22 Q. Do you know how much money was issued as the first payment?

23 A. The first payment was a total of \$32 million, which would
24 be the 20 million initially and then the additional 12 million.

25 Q. So the first was 20 and second was 12, in reality?

1 A. That's correct.

2 Q. And is there any reason -- is there any reason why
3 Mr. Buendia would send a letter with the wrong payments on it or
4 hand a letter with the wrong payments and the same everything
5 else identical in the letter?

6 A. I don't know and I can't imagine why that would be.

7 Q. Did you -- have you seen both of these letters in the
8 records of C.F.E. when you called for all records on the
9 contract?

10 A. No. Just the one that had the correct payment schedule.

11 Q. So Government's Exhibit 49, did you retrieve this exhibit
12 from the files of C.F.E.?

13 A. Yes. This is the one that is found within the documents at
14 C.F.E.

15 Q. And Government Exhibit Number 50, the one attached to an
16 e-mail from Mr. Delgado to Mr. Gireud, Mr. Miller and Mr. Adams,
17 did you ever locate this one in the records of C.F.E.?

18 A. No.

19 Q. Let me show you what's been marked as Government's Exhibit
20 Number 53?

21 MS. KANOF: Are 53 and 53A both in?

22 THE COURT: Neither one.

23 MS. KANOF: Okay. Let me get him to identify them
24 first.

25 BY MS. KANOF:

1 Q. Government's Exhibit Number 53, do you recognize this as a
2 document that was in the custody of C.F.E. as part of the Agua
3 Prieta contract?

4 A. Yes.

5 Q. Okay.

6 MS. KANOF: We move admission of Government's
7 Exhibit number 53.

8 MR. HANSHEW: No, objection.

9 THE COURT: GX-53 is admitted.

10 BY MS. KANOF:

11 Q. And now let me show you Government's Exhibit Number 60.

12 THE COURT: You only offered 53.

13 MS. KANOF: Oh. Yes. I'm sorry, Your Honor, 53A as
14 well.

15 MR. HANSHEW: No objection.

16 THE COURT: GX-53A is admitted.

17 MS. KANOF: Is 60 admitted, Your Honor? I believe it
18 is.

19 THE COURT: It is.

20 BY MS. KANOF:

21 Q. So let's go first to 53. Again, what is the date of
22 Government's Exhibit Number 53? First of all, identify that
23 it's a letter. Is it a letter again to Attorney Delgado from
24 Mr. Buendia?

25 A. Well, that's actually backwards. It was Mr. Buendia to

1 Mr. Delgado.

2 Q. And the date of the letter?

3 A. March 30th of 2010.

4 Q. And does the letter have any indication that was personally
5 received by anyone?

6 A. Yes. There's a receipt confirmation.

7 Q. And is it also March 3rd of 20 -- I mean, March 30th of
8 2010?

9 A. That's correct.

10 Q. In addition to the handwritten receipt, what is this thing
11 in a box at the bottom?

12 A. That is also a receipt certification from another part of
13 the C.F.E. company. In this case it is -- it is the deputy
14 directors of the project management. Because if you notice at
15 the bottom part, it says carbon copy of this document to Alberto
16 Ramos Elorduy, and this would be the receipt certification from
17 his stamp, his office.

18 Q. Here? Is that where it says it's copied to Mr. Ramos?

19 A. That's correct, yes. That would be it.

20 Q. Okay. So if you could read this to yourself --

21 MS. KANOF: And if he could pull 60 out of the binder.
22 That'll be 53 and 60 that he's comparing.

23 I'll ask him about that one in a minute. Let me ask
24 him about 53, first.

25 BY MS. KANOF:

1 Q. Have you read the government's exhibit, the letter in
2 Government's Exhibit 53?

3 A. Yes.

4 Q. What -- first of all, I forgot -- I forgot to ask you, what
5 is the unique letter number to the project?

6 A. That would be F.T. back slash 020 back slash 2010.

7 Q. So the other letter that Government's Exhibit 49 was letter
8 number 19, correct?

9 A. Yes, correct.

10 Q. And this is letter 20, correct?

11 A. Correct.

12 Q. Would there be any letters in between that March 23rd and
13 this March 30th letter regarding Agua Prieta II?

14 A. No.

15 Q. What is this letter about?

16 A. In this letter, they are indicating to Attorney Marco
17 Delgado to please accelerate the project to a gentleman in
18 Bancomext by the name of Carlos Flores Salinas.

19 Q. What do you mean accelerate the project?

20 A. Something that was part of the original contract, they are
21 requesting that they please move ahead of what was originally
22 contractually declared to move the project forward.

23 Q. Does this letter have anything about change in payments?

24 A. No.

25 Q. I'll show you what's been marked as Government's Exhibit

1 Number 60. Do you have it before you?

2 A. Yes.

3 Q. Okay. And what is the date?

4 A. June 4th of 2010 or April.

5 Q. April 6th?

6 A. I'm sorry. That would be April 6th of 2010.

7 Q. And what is the subject matter, in Spanish, of this letter?

8 A. Assignment of first payment?

9 Q. Okay.

10 Attached to that e-mail was the letter. Now if you
11 could look at 53, the other letter, is it the same date?

12 A. The same date, March 30th of 2010.

13 Q. Is it the same letter number 20?

14 A. That's correct. That's the same number.

15 Q. Does it say Delgado?

16 A. Yes. It was addressed to Attorney Marco Delgado.

17 Q. Is it -- does it have the same contents as Government's
18 Exhibit 53?

19 A. No.

20 Q. Starting with the beginning, are the first, let's say, the
21 first three sentences the same?

22 A. Yes.

23 Q. And, one, two, three -- is the fourth line the same?

24 A. No, it doesn't. It differs.

25 Q. Where does it start to differ, the line (Spanish)?

1 A. That's correct. Modification of payment plan.

2 Q. Okay. Is that the same as the first letter or different?

3 A. No, it's different.

4 Q. So. So starting with that -- let me go here.

5 This whole section then, is it different than the
6 original -- the other letter 20?

7 A. Yes, completely.

8 Q. Okay. How is it different?

9 A. On the first letter, it's talking about the information
10 regarding the public -- the individual at the Bancomext to whom
11 these payments were going to be addressed to, and here in this
12 one, we are talking about financing costs and about costs of
13 letters of credit.

14 Q. So the part that I just highlighted, what is that about?

15 A. That's where they are authorizing -- authorizing the
16 assignment of payments to somebody else.

17 Q. An assignment of collection rights?

18 A. No. We're talking about assignment of payments. We're not
19 talking about collection rights.

20 Q. Okay. And then the next part of that sentence, what does
21 that say?

22 A. That it was given to us and that this deduction from the
23 financing party for financing costs and the initial hiring
24 specified by the letters of credit on the project reference
25 before. Herein, they are notifying the trust of the bank.

1 They are indicating them to proceed with payments as
2 specified below, directly to the beneficiary and his capacity of
3 a signee -- the person receiving the payments.

4 Q. So what's it talking about the letters of credit? What's
5 it saying about the letters of credit?

6 MR. HANSHEW: Your Honor, I'm going to object to this
7 expert testimony. I'm objecting to his expert testimony.

8 THE COURT: I'm going to overrule that objection.

9 A. When C.F.E. is actually in their investment of projects,
10 this is very normal that they grant this to the contractors and
11 they go to the bank in order to receive financing. And in doing
12 so, they grant collection rights to the bank whereby C.F.E. then
13 pays directly to the bank.

14 BY MS. KANOF:

15 Q. Okay. None of that -- that stuff wasn't in the first
16 letter number 20, right?

17 A. None that was included.

18 Q. Now in the first, was there any kind of -- the first letter
19 with the (Spanish) -- in it, letter number 20 of March 30th,
20 was there any kind of a chart?

21 A. None of this at all.

22 Q. So let's look at the first dollar amount on the chart to a
23 little over 2.6 million. What is Mr. Buendia telling
24 Mr. Delgado about the \$2.6 million, allegedly?

25 MR. HANSHEW: Objection. Calls for hearsay, asking

1 what Mr. Buendia is saying.

2 THE COURT: Are you asking about what he means in the
3 letter?

4 MS. KANOF: I'm asking what that money is supposed to
5 be for.

6 THE COURT: From this letter?

7 MS. KANOF: From this letter.

8 THE COURT: I'll overrule that objection.

9 A. What Mr. Buendia would be indicating here was the provider.
10 They were withholding partial payment on behalf of a financial
11 institution, but C.F.E. never withholds money on behalf of
12 anybody. What they do is assign collection rights and then the
13 provider assigns collection rights to the entity providing the
14 financing, but they never hold or withhold funds on behalf of
15 any financial institution.

16 BY MS. KANOF:

17 Q. So C.F.E. would never withhold \$7,678,907 as this letter
18 says?

19 A. No. They would never withhold anything.

20 Q. The second dollar amount, who is that 11-million-plus
21 supposed to go to?

22 A. This, according to this letter, would go directly to the
23 technology director, but I reiterate. C.F.E. would never pay
24 anybody else other than the contractor who signed the actual
25 contract or anybody whom that -- that contractor would assign

1 collection rights to.

2 Q. Would it be any of C.F.E.'s business how much the
3 subcontractor gets?

4 A. No.

5 Q. And the third line, what is that million dollars about?

6 A. Actually, under here where it mentions direct payment to
7 the contractor, that actually doesn't apply here, because this
8 term of contractor would not apply on somebody who earns -- wins
9 the bid for a public works project. Actually, the correct term
10 here would be provider, as this contract was for the acquisition
11 of turbines, and so there would not be a contractor. There
12 would only be a provider.

13 Q. Is that "proveedor" that you have been referring to?

14 A. Yes, the provider.

15 Q. And is that what F.G.G. is referred to throughout the
16 contract, Government's Exhibit Number 18 in its original
17 Spanish? Looking at page number four, is F.G.G. the
18 "proveedor"?

19 A. Yes. For all purposes, he would be a provider for us.

20 Q. Okay. He would not be a (Spanish)?

21 A. No, provider.

22 Q. And with regard to the \$15-million number on this second
23 letter with a number 20 on it, is that a correct dollar amount
24 with regard to Anexo S and letter [sic] 49 that was shown to you
25 earlier?

1 A. I guess, but that would be incorrect, because what was
2 actually paid out was the 20 million in addition to the 12
3 million, not this 15 million.

4 Q. When you gathered the records from the finance department
5 to look at the case, was this document in the records of C.F.E.?

6 A. No.

7 Q. When is the first time you saw it?

8 A. Well, I guess this would be the first time. I hadn't seen
9 it.

10 Q. Okay. Now, if you could look back at 53 and read the rest
11 of the letter just to note whether it's the same or different
12 than the other letter number 20?

13 A. Essentially, it is the same.

14 Q. Okay. So, the other document that I was showing you from
15 number 53, I forgot to ask you, was that document that did not
16 have a payment schedule in it, but merely had Mr. Flores
17 Salinas's name in the center, was that found in the records of
18 C.F.E.?

19 A. Yes.

20 MS. KANOF: I'm going to a new topic. Do you want me
21 to --

22 THE COURT: Let's recess.

23 Ladies and gentlemen, we're going to recess until
24 1:50. I'd ask you to be back in the jury room at 1:50. We'll
25 resume our proceedings then.

1 On your break, if you have the opportunity to discuss
2 amongst yourselves whether you want to keep the start time the
3 same or you want to move it up depending on how your commute is
4 in the morning, please let us know. We can start as early as
5 7:00 if you want. You just decide amongst yourselves if you
6 want to change it or not.

7 We are in recess until 1:50.

8 COURTROOM SECURITY OFFICER: All rise.

9 (Lunch break at 12:45 p.m. to 1:55 p.m.)

10 THE COURT: Let the record reflect that all members of
11 the jury are present, the United States through its assistant
12 United State's attorneys are present, the defendant and his
13 counsel are present.

14 The witness, Mr. Matamala, is on the witness stand.

15 Ms. Kanof?

16 JUAN PABLO MATAMALA CORTES,

17 DIRECT EXAMINATION BY THE GOVERNMENT

18 BY MS. KANOF:

19 Q. Mr. Matamala, I have before you what's marked as
20 Government's Exhibit Number 133. And could you take a look at
21 it and see if you recognize it?

22 A. No.

23 Q. You do not recognize it.

24 You had previously indicated that Mr. Delgado was
25 given an opportunity to provide a performance bond so the

1 contract could continue, correct?

2 A. Yes, that's correct.

3 Q. Did that happen?

4 A. No.

5 Q. And when it did not happen, what did you do on behalf of
6 C.F.E.?

7 A. I -- once this -- I'm sorry. Once this did not happen,
8 when the bond was not presented, then C.F.E. decided to rescind
9 on the contract as a result of F.G.G.'s failure to provide
10 technical documentation on the required turbines.

11 Q. What do you mean by rescind the contract?

12 A. This is an administrative process contemplated by a
13 rescinding on the contract that is available to any properties
14 that are the -- that belong to the federal government and
15 contribute balance to the provider, and in this case that would
16 be F.G.G.

17 Q. In regard to that, did you visit El Paso?

18 A. Yes.

19 Q. By yourself or with someone else?

20 A. I came on two occasions. The first time I came with
21 somebody.

22 Q. And who was that person that you came with?

23 A. That first time was a colleague of mine and attorney by the
24 name of Daniel Jimenez. He worked at the C.F.E. office of the
25 general counsel.

1 Q. Did you notify Mr. Delgado that you were coming to El Paso
2 before you came?

3 A. No.

4 Q. What was the purpose of your visit?

5 A. According to the contract, it was to initiate the process
6 to rescind on the contract.

7 Q. And what -- where did you go in El Paso?

8 A. I went to an office as indicated on the contract itself on
9 Remcon Circle. It was a virtual office with a receptionist that
10 would receive notification.

11 Q. And did you leave it there with that receptionist?

12 A. Yes.

13 Q. However, was there a time limitation -- excuse me -- what
14 kind of document did you leave?

15 MR. HANSHEW: Objection, Your Honor. Expert
16 testimony.

17 THE COURT: Well, he might be drifting on -- he can
18 tell us about the document he left.

19 BY MS. KANOF:

20 Q. Was it some kind of a notice that you left for Mr. Delgado?

21 A. It was a notification to initiate the process to rescind on
22 the contract.

23 Q. And did he have a certain time limit on which to respond to
24 that notification?

25 A. He had ten days to respond to the notification.

1 Q. Did he?

2 A. Yes, he did respond.

3 Q. And what happened next?

4 A. When we came to go over the arguments presented from
5 F.G.G., their motives for noncompliance, it was determined that
6 they did not have a basis for those arguments and therefore we
7 decided to rescind on the contract and for reasons attributable
8 to F.G.G.

9 Q. And did you make a second visit to El Paso?

10 A. Yes.

11 Q. When was that?

12 A. April of 2012.

13 Q. And what document did -- did you tell Mr. Delgado you were
14 coming in advance?

15 A. No.

16 Q. Where did you go?

17 A. Remcon. Once again, I returned to the office on Remcon
18 center in order to notify them of our determination to rescind
19 on the contract, and after that, to nullify or void the
20 contract.

21 Q. Did you make a finance demand in that notice?

22 A. Yes. By means of this document we notified F.G.G. that he
23 was to return -- to refund the \$32 million that were given
24 initially on the initial payment and then an additional
25 \$6 million that were for the delays for costs of the delays of

1 the project.

2 Q. Did you say \$6 million?

3 A. I did mention \$6 million, but I believe it was more than
4 that. I believe it was around \$12 million.

5 Q. What was the total amount of the demand?

6 A. I believe it was \$52 million.

7 MS. KANOF: Pass the witness.

8 THE COURT: Mr. Hanshaw?

9 JUAN PABLO MATAMALA CORTES,

10 CROSS-EXAMINATION BY THE DEFENSE

11 BY MR. HANSHEW:

12 Q. Good afternoon, sir.

13 A. Good afternoon.

14 Q. That's the C.F.E. lawyer sitting in the back, right?

15 A. Yes.

16 Q. And he and you have met with the government and agents on a
17 number of occasions before you came here, correct?

18 A. Yes.

19 Q. And one of the reasons was to prepare your testimony for
20 this trial, correct?

21 A. Yes.

22 Q. And the first time that you met with them, did they record
23 your first impression of the documents they showed you?

24 A. No.

25 Q. No videos?

1 A. No.

2 Q. No audio recordings?

3 A. No.

4 Q. And you had subsequent meetings after that first one to go
5 over those same documents again, correct?

6 A. Yes.

7 Q. And they re-reviewed your impressions of the documents?

8 A. I don't understand what you mean by my impressions on the
9 documents.

10 Q. Your thoughts about the documents.

11 A. No. I already had my own thoughts beforehand.

12 Q. Okay. And when they re-reviewed it, they didn't record
13 this meeting either, did they?

14 A. No, it was not recorded.

15 Q. And I want to make something clear. You started with
16 C.F.E. in May of 2011; is that right?

17 A. Yes.

18 Q. Okay. So your testimony today about any documents,
19 contracts, e-mails, that predated May, 2011, you weren't part of
20 those documents being created, correct?

21 A. That's correct.

22 Q. Okay. And you -- but you are familiar with the documents
23 in the record -- the C.F.E. documents that relate to Agua Prieta
24 II project, correct?

25 A. Yes, correct.

1 Q. And one of the documents that Ms. Kanof showed you earlier,
2 I put up there on the screen, you indicated you are familiar
3 with this document, correct?

4 MS. KANOF: Objection, Your Honor. He said he was not
5 familiar with the document.

6 THE COURT: Well, he can tell us what he said.

7 A. Yes, I do recognize this document.

8 BY MR. HANSHEW:

9 Q. Okay. And you are asked about C.F.E.'s impression of this
10 document, correct?

11 A. Yes.

12 Q. And you stated that it was deficient for collateral,
13 correct?

14 A. Yes.

15 Q. Now, to be clear, C.F.E. has never agreed that this
16 document is invalid, correct?

17 A. Yes, correct.

18 Q. And C.F.E. has always maintained that this is enforceable?

19 A. Well, what we have always maintained is that as far as what
20 is enforceable was the pledge that was formalized in Mexico
21 before a notary public.

22 Q. That pledge includes this document, correct?

23 A. No, that's not correct.

24 Q. Okay. And so you're saying that C.F.E. has not -- that
25 C.F.E. has given up its claim that the document's enforceable?

1 A. No. This document from our perspective is just part of the
2 authorizing documentation that makes the pledge valid and
3 whereby an entity -- a notarizing entity in Mexico has declared
4 this pledge to be valid, we accept it as such.

5 Q. Go ahead and look at the document in front of you. And
6 it's Defendant's Exhibit 172. Do you see that?

7 A. Yes.

8 Q. You're familiar with this document, correct?

9 A. Yes.

10 MR. HANSHEW: I'd ask to admit that, Your Honor.

11 MS. KANOF: No, objection.

12 THE COURT: Defendant's 172 is admitted.

13 BY MR. HANSHEW:

14 Q. All right. I'm going to show you a section here. Well,
15 I'll show you -- can you read that section there?

16 A. And it says M.P.S.A.'s position regarding the existing
17 validity and/or intention of the pledge.

18 MS. KANOF: Your Honor, can we approach the bench for
19 just a second?

20 THE COURT: Sure.

21 (Bench conference.)

22 MS. KANOF: Perhaps I misunderstood the Court's
23 ruling, but I thought the Court says the existence of the
24 settlement was admissible, but not the contents for
25 cross-examination.

1 THE COURT: Remind me? Was that last week?

2 MS. KANOF: It was the week before and on the Thursday
3 meeting on the motions in limine with regard to the lawsuits
4 document. This is one of the lawsuit documents and this is
5 where C.F.E. settled with Mitsubishi.

6 THE COURT: Right. And so the evidence in the lawsuit
7 was to show some sort of motive?

8 MS. KANOF: Bias.

9 THE COURT: On behalf of the person that was
10 testifying?

11 MS. KANOF: Right.

12 THE COURT: But not on the -- is that what that is?

13 MS. KANOF: It's actually a settlement of the lawsuit
14 and so I don't have any objection for him to talk about the fact
15 that there was a lawsuit and -- but the contents of the
16 settlement --

17 THE COURT: Okay. Well, what is --

18 MR. HANSHEW: Well, Judge, he talked to us earlier
19 about the document about the document not being a valid pledge.
20 And this document that I've highlighted in red, in these
21 meetings, showed that C.F.E. kept their position that the pledge
22 was valid and enforceable. It goes directly to what they put up
23 in their whole entire direct.

24 MS. KANOF: And the next paragraph says that
25 Mitsubishi kept their position that the document was not

1 enforceable, so now we're trying the lawsuit which is why the
2 government --

3 THE COURT: I suppose I'll let him put in the
4 paragraph and you come back with the other paragraph and
5 hopefully we're done there.

6 MS. KANOF: Okay.

7 (Bench concludes.)

8 BY MR. HANSHEW:

9 Q. So you'd agree that this paragraph -- in this paragraph,
10 C.F.E. maintains the validity of the pledge, correct?

11 A. Yes.

12 Q. Then were you asked about how you sent a termination letter
13 to Mr. Delgado, correct?

14 A. Yes.

15 Q. And that that was for approximately \$44 million?

16 A. Yes, that's correct, \$44 million.

17 Q. 32 million for the payments that were made already,
18 correct?

19 A. Yes, ahead of time.

20 Q. And then 12 million for damages?

21 A. Yes.

22 Q. All right.

23 Now in this same document you just looked at here,
24 C.F.E. gives over that \$44 million to M.P.S.A., don't they?

25 MS. KANOF: Now I'm going to object to the relevance,

1 Your Honor.

2 MR. HANSHEW: They brought up the damages in the
3 termination letter. They brought it up here and asked him about
4 the termination letter, what it included and how much quantity
5 it was, and this goes directly -- this goes directly to M.P.S.A.

6 THE COURT: How is that relevant to their damages?

7 MR. HANSHEW: They are a financial interest in the
8 outcome of this document in this case, Judge.

9 THE COURT: They have a financial interest in the
10 outcome of this case?

11 MS. KANOF: Correct.

12 THE COURT: I'm going to allow the questioning.
13 That's going to allow Ms. Kanof to get into what she needs to in
14 response to that.

15 MR. HANSHEW: I understand, Judge.

16 THE COURT: All right.

17 A. Yes.

18 BY MR. HANSHEW:

19 Q. In this document, M.P.S.A. also got to keep the \$18 million
20 they got paid, correct?

21 A. Yes.

22 Q. And M.P.S.A. also gets paid another \$76 million for the
23 same turbines, correct?

24 A. Correct.

25 Q. Now, Ms. Kanof asked you about whether the people of Agua

1 Prieta needed this -- the electricity to be provided by the
2 project, correct?

3 A. Yes. And just to mention that this plant in Agua Prieta
4 doesn't just supply energy to the town itself, but the entire
5 northeastern area of Mexico.

6 Q. Okay. And you just explained that in the present tense,
7 that's because the turbines are in Agua Prieta right now, aren't
8 they?

9 A. The turbines in Agua Prieta have been in place as of May of
10 2015, but to date, the plant is not running at 100 percent due
11 to the delays directly related to the late delivery of the
12 turbines.

13 Q. And those turbines came as a result of a direct contract
14 between M.P.S.A. and C.F.E., correct?

15 A. No. The contract between M.P.S.A. and C.F.E. was actually
16 in order to recover the turbines that C.F.E. had already
17 purchased. The turbines were in the possession of M.P.S.A. And
18 after we -- everything was said and done, at the end it was
19 determined who the owner was. What happened is that C.F.E. was
20 trying to recover the turbines that it had originally purchased.

21 And it's important to mention that for the Agua Prieta
22 II plant, the turbines were defined for that particular plant
23 by -- they were designed by Mitsubishi. We could only use these
24 and no other ones.

25 Q. You're saying that Mitsubishi designed these turbines just

1 for the Agua Prieta project?

2 A. No. It was designed for the Mitsubishi turbine.

3 Q. And C.F.E. got the Mitsubishi turbine, correct?

4 A. Yes.

5 Q. And they got them without F.G.G., correct?

6 A. Yes.

7 MR. HANSHEW: No further questions, Your Honor.

8 THE COURT: Thank you, Mr. Hanshew.

9 Ms. Kanof?

10 JUAN PABLO MATAMALA CORTES,

11 REDIRECT EXAMINATION BY THE GOVERNMENT

12 BY MS. KANOF:

13 Q. Okay. Mr. Matamala, first of all, before we go into the
14 settlement agreement, did C.F.E. loose a lot of money on this
15 because of Mr. -- because it fell through and was rescinded?

16 A. Yes, a lot of money.

17 Q. How was that?

18 THE INTERPRETER: I need to clarify a word, Your
19 Honor.

20 THE COURT: Yes, ma'am.

21 A. Well, specifically, it pertains to the Agua Prieta project,
22 what was -- well, it was -- had to be done, because there was a
23 deficit in the amount of turbines that were available in the
24 market. They had to divide this in two portions; the purchase
25 of the turbines and then the public works portion of it.

1 Due to the fact that the turbines were late, this
2 resulted in delays in public works, which C.F.E. then had to
3 finance to pay for this delay as a result of the turbine delays
4 resulting in millions of dollars.

5 The last amount that I was aware of was up to
6 \$90 million directly related to these delays affecting the
7 public work. That's not take into account that this Agua Prieta
8 branch normally works off of natural gas in order to generate
9 power, which is a source that is a lot cheaper than the
10 substitutions that C.F.E. then had to take in order to source
11 this project. They had to then substitute it with fuel oil in
12 order to keep supplementing this expense at the plant.

13 BY MS. KANOF:

14 Q. So the turbines according to the original contract were
15 supposed to be installed in 2012; is that correct?

16 A. Yes. They were to be delivered by 2012 and they were
17 supposed to be operational by 2013.

18 Q. And between 2013 and the present, to make up for the power
19 that was going to be generated, did C.F.E. have to purchase
20 power to keep the electricity going in that part of northern
21 Mexico?

22 A. Yes. Yes. If you are to calculate that it costs
23 approximately 140 -- \$140 per megawatt and the plant in Agua
24 Prieta was expected to generate about 3,000 megawatts annually,
25 then you can calculate that we had to pay out \$400 million in

1 order to continue processing electricity.

2 And up to date, we are calculating that we're up to
3 \$1.2 billion in losses due to delays for the turbines in Agua
4 Prieta.

5 Q. So just as a result of this project not being completed
6 timely, it's costing the Republic of Mexico more than a billion
7 dollars to make up for the electricity that could have been
8 generated by these turbines if they had been installed in time?

9 A. Yes, correct.

10 Q. And you said something about financing the public --
11 something about \$90 million, and I didn't understand what that
12 \$90 million was to pay for. What was it to pay for?

13 A. Those \$90 million are actually fees that have to be paid as
14 fines per se, because C.F.E., when they are building this plant
15 and because the turbines were not delivered in a timely basis,
16 they had to pay this to the contractors that were working on the
17 Agua Prieta project number II, because these contractors have to
18 find their own financing. And normally, they have to go to a
19 bank in order to get the financing for the project. When they
20 are delayed, the bank charges interest and therefore C.F.E.
21 needs to pay this interest that the contractors have incurred
22 due to the delays.

23 Q. Do you know who the contractor was that you had to pay?

24 A. Yes.

25 Q. Who was it?

1 A. There was a company by the name of P.A.P.

2 Q. It wasn't Mitsubishi, was it?

3 A. No, it's not Mitsubishi.

4 Q. Okay. Defense Exhibit 172, this is a legal -- there were
5 lawsuits that came out of this, correct?

6 A. That's correct.

7 Q. Is this document a -- Defense Exhibit 172 a settlement
8 between Mitsubishi and C.F.E.?

9 A. Yes. That is because when we filed suit in order to recoup
10 our turbines, it turned out this that the turbines were in
11 possession of Mitsubishi and we had to file lawsuits against
12 Mitsubishi and F.G.G. jointly.

13 Q. Because of what the pledge document said?

14 A. Yes, that's correct. Due to the pledging documents, we
15 were under the impression that the turbines were under the
16 possession of F.G.G., but that was not the case. They were in
17 the possession of Mitsubishi.

18 Q. In fact, the pledge agreement says they're in the
19 possession of the "proveedor," right?

20 A. Yes, that's correct. It was explicitly detailed in the
21 pledge documents that they were under -- they were the property
22 and under the control of the "proveedor."

23 Q. And who was the "proveedor"?

24 A. F.G.G.

25 Q. Now the settlement document -- it was settled in 2013,

1 correct?

2 A. Correct.

3 Q. And defense counsel showed you paragraph E. from there
4 exhibit, something about the trust still recognizes the pledge
5 agreement, correct?

6 A. Yes, it says that. It recognizes that there exists -- that
7 a dispute exists.

8 Q. If you scroll down, on that same page under D, C.F.E. also
9 recognizes the existence of a dispute among the parties?

10 A. That's correct.

11 Q. However, but in order to terminate the existing dispute and
12 prevent any future disputes, they decide to enter into this
13 agreement, correct?

14 In order to terminate the existing dispute and prevent
15 any future dispute, they agree to settle?

16 A. Well, yeah, that's correct, because once we saw that there
17 was no solution as to whether the pledge was valid or not and we
18 weren't able to settle that, then we reached an agreement with
19 the turbine holder from whom we then received the turbines.

20 Q. That was page 7 of 23 of the pages that we were looking at,
21 correct?

22 A. Yes.

23 Q. But if you scroll down to page 8, Mitsubishi makes a
24 declaration at 12, correct?

25 A. Yes, that's correct.

1 Q. And doesn't Mitsubishi also say they recognize the
2 existence of the dispute?

3 A. That's correct, the same dispute.

4 Q. Regarding the pledge, correct?

5 A. That's correct.

6 Q. And just like the trust, just like C.F.E., they also don't
7 give up their position regarding the existence of the validity
8 that it is not valid, correct, the pledge?

9 A. Correct.

10 Q. So it doesn't change anything regarding their positions?

11 A. That's right, it doesn't.

12 Q. But similarly, in order to terminate the existence of the
13 dispute and to any future disputes exactly like C.F.E., they
14 agreed to enter into the settlement, correct?

15 A. Yes. It was M.P.S.A., yes, correct.

16 Q. From the time that C.F.E. entered into the contract with
17 F.G.G., did they start to make ready the location near Agua
18 Prieta to build the power plant?

19 A. Yes.

20 Q. And are those some of the expenses you are talking about?

21 A. Yes, more than just a location. It was a public works, the
22 place where they actually placed the turbines.

23 Q. Is the -- you think you previously testified that the plant
24 was still not at a 100 percent; is that correct?

25 A. That's correct.

1 Q. When they were making ready the location for the turbines,
2 were they making it ready for the specific turbines that C.F.E.
3 agreed to buy from F.G.G.?

4 A. No, because F.G.G., once they got the bid, they were
5 granted the bid by C.F.E., they already knew which turbines they
6 were going to build the plant for. And so the location itself,
7 it was ready before they even put the turbines out to bid.

8 And so once the proveedor gets the bid for the
9 turbines, then they start building the actual plant to fit the
10 size of the turbines, not the other way around.

11 Q. Okay. So did they begin building that plant at the time
12 that they got the bid?

13 A. That's correct.

14 Q. Okay. Are the turbines still in the testing phase?

15 A. Correct.

16 Q. Is C.F.E. still having to pay money to buy wattage from
17 elsewhere?

18 A. Yes. Although the loss is less now, because once the
19 turbines are in the testing phase they are able to generate a
20 certain degree of electricity which then can be sold, so the
21 loss is less, but it's still a loss.

22 Q. Did you have any personal financial interest in the outcome
23 of this case?

24 A. No.

25 Q. Are you afraid you'll be fired if this case does not go the

1 way that your bosses want it to go?

2 A. No.

3 MS. KANOF: Pass the witness.

4 THE COURT: Ms. Hanshew?

5 MR. HANSHEW: No further questions, Your Honor.

6 THE COURT: All right.

7 May Mr. Matamala be permanently excused?

8 MR. HANSHEW: Yes, Judge.

9 THE COURT: Ms. Kanof? Ms. Kanof?

10 MS. KANOF: Yes, we would ask that he be permanently
11 excused.

12 THE COURT: Mr. Matamala, thank you so much for coming
13 down, you are free to go.

14 (Witness excused.)

15 THE COURT: Who is your next witness?

16 MR. ARREOLA: Your Honor, as a housekeeping matter,
17 the government would like to offer a few exhibits that haven't
18 been offered yet. First, what's been marked for identification
19 is Government's 20 and 20A. Those are Attachment T to the prime
20 contract and they were received pursuant to the Mutual Equal
21 Assistance Treaty Request of the Mexican government.

22 THE COURT: All right.

23 Mr. Hanshew, aside from that which you've already
24 stated into the record, any objections to 20?

25 MR. HANSHEW: No, Your Honor.

1 THE COURT: GX-20 is admitted.

2 How about 20A, which is the translation?

3 MR. HANSHEW: No, Your Honor.

4 THE COURT: All right. 20A is admitted as well.

5 MR. ARREOLA: Your Honor, government also offers from
6 the MLAT, Government's Exhibits 46, 46A and 84. Those --

7 THE COURT: Hold on hold on.

8 As to 46 and 46A, aside from anything that you've
9 already articulated, any objection?

10 MR. HANSHEW: No, Your Honor.

11 THE COURT: GX-46 and 46A is admitted.

12 What was your next one?

13 MR. ARREOLA: 84, what has been marked as Government's
14 Exhibit 84.

15 THE COURT: Mr. Hanshaw, other than what you've
16 already stated into the record, any objections to 84?

17 MR. HANSHEW: No, Your Honor.

18 THE COURT: GX-84 is admitted.

19 MR. ARREOLA: Your Honor, the government also offers
20 what's a self-proving affidavit what's been marked as
21 Government's Exhibit 142.

22 THE COURT: Standard charter records.

23 Any objection to GX-142?

24 MR. HANSHEW: No, Your Honor.

25 THE COURT: Okay, GX-142 is admitted.

1 MR. ARREOLA: And Your Honor, does your record show
2 145 is in evidence?

3 THE COURT: Yes, ma'am.

4 MR. ARREOLA: That's all, Your Honor. Thank you.

5 MS. KANOF: Your Honor, the government rests.

6 THE COURT: All right.

7 Ladies and gentlemen, let's recess for 12 minutes.
8 I'd ask you to be back in the jury room at 3 o'clock. We'll
9 resume our proceedings at 3:00 -- 2:55, actually. 2:55.

10 COURT SECURITY OFFICER: All rise.

11 (Jury not present.)

12 (Interpreter excused.)

13 THE COURT: Mr. Hanshew, did you have something?

14 MR. HANSHEW: Yes, Judge. If I may. I have two
15 motions to make, the first of which -- if I can approach your
16 deputy?

17 THE COURT: Yes, sir.

18 MR. HANSHEW: Thank you.

19 The first motion, Judge, is a motion to dismiss
20 Counts One and Two for lack of jurisdiction. I incorporate by
21 reference the written memorandum and ask that the Court enter
22 and file that, that was provided to the deputy, Judge.

23 In brief, I will explain that our position here is
24 that the government failed to show that there's a jurisdictional
25 hook as it relates to Count One and Two. As you'll see in the

1 superseding indictment, the wire transfers in Counts One and
2 Two, the 20 million and 12 million that we've heard so much
3 about, are described in the indictment of going from Banco
4 Mexico, Mexico, to the Caribbean account, therefore, obviously
5 missing any contact with the United States. So it's our
6 position that those two counts should be dismissed for lack of
7 jurisdiction, Judge, and we've detailed that a bit more in our
8 motion.

9 The second motion is -- in that motion, you'll note at
10 the end that we alternatively ask for a judgment of acquittal
11 related to that.

12 The second motion in full is for a motion for a
13 judgment of acquittal on all counts, Judge.

14 THE COURT: All right. And I'll deny your second
15 motion.

16 What about his jurisdictional argument regarding the
17 20 and \$12-million transfers to Banco de Mexico to the Turks &
18 Caicos?

19 MS. KANOF: Could we read his memo first? We do have
20 a response, Your Honor, and I will tell the Court -- can we read
21 it first?

22 THE COURT: Oh, sure.

23 MR. ARREOLA: Your Honor, the government has a brief
24 response to, and we've now reviewed the motion, and what appears
25 they are relying on is this Fifth Circuit pattern jury

1 instruction regarding foreign commerce and suggesting that
2 this -- these two transfers did not pass through the United
3 States; however, the evidence in the record is they passed
4 through the United States both at standard charter and through
5 Wells Fargo, which was formally Wachovia. That's the
6 government's response to that.

7 I'd also like to add that one of the essential
8 elements of wire fraud is a scheme to defraud and there's ample
9 evidence in the record that that scheme to defraud was
10 orchestrated here in El Paso, Texas. For example, and just off
11 the top of my head, there was an early meeting at Ardivino's
12 restaurant where Mr. Delgado made a pitch to the uncle of Mace
13 Miller to get an initial investment. He also presented the
14 M.O.U. at Time Matters restaurant here in El Paso. That
15 memorandum of understanding was presented to Mr. Gireud at that
16 Time Matters restaurant. There was also the power of attorney,
17 which is also on the record, and that was notarized and it was
18 signed here in El Paso, the document itself says it was signed
19 in El Paso.

20 The victim account, for a lack of a better word, the
21 account to which the funds were supposed to go was an F.G.G.
22 account, which was right here in El Paso. The document
23 directing that the funds be sent to an offshore account in the
24 Turks & Caicos Islands, that has Mr. Delgado's signature on it.
25 That also has an El Paso address on it. So if there were any

1 place for this case to be, it's here in El Paso.

2 And with respect to their jurisdictional argument,
3 Your Honor, the wires transferred through the United States, and
4 that's clear from the First Caribbean bank records which show --

5 THE COURT: Can you show me that?

6 MR. ARREOLA: Sure. Absolutely, Your Honor.

7 THE COURT: And this is GX --

8 MR. ARREOLA: Government's Exhibit 1, Your Honor. I'm
9 looking at age 789. And those records indicate --

10 THE COURT: Can you read that? I can't read that.
11 Should I look it up? Oh, I see Wachovia there.

12 MR. ARREOLA: Those indicate sender institution,
13 Wachovia Bank, New York. And also, Your Honor, this is the 20
14 million and the wire transfer credit advice for the 12 million
15 followed the same route.

16 Your Honor, if I could also invite the Court to look
17 at Mr. Delgado's request for the transaction for the accounts to
18 be changed, that also indicates the route was supposed to go
19 throughout the United States, and that was government exhibit --

20 THE COURT: Is that GX-43?

21 MR. ARREOLA: Yes, Your Honor, this was Government's
22 Exhibit 43.

23 THE COURT: Send via --

24 MS. ARREOLA: Send via Wachovia Bank in New York.

25 MR. HANSHEW: If I may, Judge?

1 THE COURT: Sure.

2 MR. HANSHEW: Thank you.

3 I'd again refer the Court back to the superseding
4 indictment. Both Counts One and Two specifically delineate this
5 wire transfer of funds from a bank account in Republic of Mexico
6 to a bank account in the Turks & Caicos Islands.

7 In terms of the, you know, the purported evidence that
8 showed that, you know, those banks had something to do with the
9 United States, that's not explained in those documents and
10 you'll remember the testimony on Friday that this Court
11 correctly precluded, which was they brought in the Wells Fargo
12 person to start testifying about what these things meant.

13 THE COURT: Yeah.

14 MR. HANSHEW: And it was excluded because expert
15 testimony. The only testimony that that individual put on to
16 explain what these documents are, Judge, was that it went from
17 Caribbean -- Mexico to Caribbean, nothing else. They didn't
18 provide any testimony or evidence about what the rest of those
19 meant.

20 THE COURT: What's the case that you have that says
21 that that's it?

22 MR. HANSHEW: I don't think there's a case that says
23 this, because this is a first impression in the sense of you're
24 applying --

25 THE COURT: I think I'm limited to the four corners of

1 the indictment to what they say, that it goes from Mexico to the
2 Caribbean and evidence that it actually traveled through some
3 other places.

4 MR. HANSHEW: Well, I don't think there's -- it's our
5 position there's no --

6 THE COURT: -- jurisdiction --

7 MR. HANSHEW: There's -- I'm sorry, Judge. There was
8 no evidence that was put in this case that shows that United
9 States contact. In fact, it was properly precluded from being
10 introduced. They didn't bring an expert to explain.

11 THE COURT: She just showed me the wire fraud that it
12 went through the United States.

13 MR. HANSHEW: I don't think that proves that up.
14 That's our position.

15 THE COURT: That what?

16 MR. HANSHEW: I don't believe that that evidence
17 proves up that it's wired through the United States.

18 THE COURT: Oh, okay. All right.

19 Anything else?

20 MR. ARREOLA: Nothing else, Your Honor.

21 THE COURT: Okay. I'm going to deny your first
22 request for dismissal for lack of jurisdiction as well.

23 So your relief is denied in all respects.

24 Are you going to put on evidence?

25 MR. HANSHEW: We are not going to put on any

1 witnesses, Judge.

2 THE COURT: Then I think Waheed has been working with
3 you on the charge, right?

4 MR. HANSHEW: Correct.

5 THE COURT: If I have the jury back, let's say at
6 3:30, we should work it out and give you a chance to make your
7 objections.

8 MR. HANSHEW: I believe so.

9 MS. KANOF: That's fine. I just wanted to know how
10 much time we have for argument.

11 THE COURT: How much time do you want? Let's see.

12 MS. KANOF: An hour for the government.

13 THE COURT: Mr. Hanshaw?

14 MR. HANSHEW: We'll take an hour as well.

15 THE COURT: Okay. All right. We can do that. Do an
16 hour each.

17 That's going to take us to right after 6 o'clock. So
18 at that time, do I send them home and come back in the morning
19 to deliberate or have them start deliberating tonight and let
20 them go as long as they want?

21 MS. KANOF: I think we would prefer they started
22 deliberating, but I wouldn't mind you asking what they wanted to
23 do.

24 THE COURT: I think they're going to want to go home
25 and maybe they'll come back tomorrow early.

1 THE COURT: Let's get the charge. I'll get Waheed out
2 here. And once we boil it down to what I need to make a call
3 on, I'll do that.

4 MR. HANSHEW: And Judge, for purposes of the record,
5 re-urge our motion for acquittal now that everything is closing.

6 THE COURT: Okay. Well, I guess I'm going to call him
7 back out. You are going to rest. The government will close.
8 You'll close. And at that point you can re-urge your motion
9 or --

10 MR. HANSHEW: Thank you.

11 THE COURT: -- or do you do it now and not --

12 MR. HANSHEW: I think procedurally I have to do it
13 after it closes.

14 THE COURT: Okay. So we'll do it then. Right after
15 that I'll read them the charge. By then we will have the
16 charge.

17 COURTROOM SECURITY OFFICER: All rise.

18 (Break at 2:57 p.m. to 3:37 p.m.)

19 THE COURT: Let the record reflect that all members of
20 the jury are present, the United States through its assistant
21 United State's attorneys are present, the defendant and his
22 counsel are present.

23 All right. Mr. Hanshaw, the government has closed --

24 MS. KANOF: The government --

25 THE COURT: -- has rested.

1 MR. HANSHEW: Your Honor, with that, move for a
2 judgment of acquittal.

3 THE COURT: Denied.

4 MR. HANSHEW: And we rest as well.

5 MS. KANOF: Your Honor, the government closes.

6 THE COURT: All right.

7 Ladies and gentlemen, we are very close to having the
8 final charge ready.

9 MS. KANOF: They need to close, Your Honor.

10 THE COURT: He rested and closed.

11 MR. HANSHEW: Rest and close and move for judgement of
12 acquittal.

13 THE COURT: That's denied.

14 We'll have the final charge ready for you shortly. I
15 say 15 minutes.

16 And it's my understanding you want to proceed today
17 with closing; is that correct?

18 MS. KANOF: I think both sets have agreed to proceed
19 today.

20 THE COURT: So then each side will argue to you for
21 about 30 minutes.

22 So my guess is that somewhere around 5:30, 5:45,
23 there'll be done with your arguments to you, and at that point,
24 you can begin your deliberations or if you'd rather come back in
25 morning to start your deliberations, all you got to do is let me

1 know. At that point you'll be in charge and you'll let me know
2 how long you want to work.

3 With that, I'll ask that you follow Mr. Heidtman to
4 the jury room. We'll bring you back in about 15 minutes to read
5 to you the Court's charge.

6 COURT SECURITY OFFICER: All rise.

7 (Jury recessed.)

8 FORMAL OBJECTIONS TO THE CHARGE

9 THE COURT: Let the record reflect that the jury is
10 not present, the United States through its assistant United
11 State's attorneys are present, the defendant and his counsel are
12 present.

13 Ms. Kanof, has the government received a copy -- this
14 says draft.

15 MS. KANOF: Yes, we have, Your Honor.

16 THE COURT: And do you have any objections to the
17 Court's charge?

18 MS. KANOF: No, Your Honor.

19 THE COURT: Mr. Hanshaw, has the government received a
20 copy of the Court's charge?

21 MR. HANSHEW: The defense has.

22 THE COURT: I'm sorry, the defense.

23 MR. HANSHEW: Yes.

24 THE COURT: Have you had an opportunity to review it?

25 MR. HANSHEW: Yes, Your Honor.

1 THE COURT: Do you have any objections to it?

2 MR. HANSHEW: No, Your Honor.

3 (Jury present.)

4 THE COURT: Be seated please.

5 Let the record reflect that all members of the jury
6 are present, the United States through its assistant United
7 State's attorneys are present, the defendant and his counsel are
8 present.

9 Ladies and gentlemen of the jury. Thank you so much
10 for your patience with us during this break. We have finalized
11 the Court's charge. I'm going to read that charge to you.

12 Once you retire to the jury room at the end of the
13 arguments, there'll be a copy of this charge for all of you and
14 there'll be one copy that'll be designated for the presiding
15 juror.

16 CHARGE OF THE COURT

17 THE COURT: Members the jury:

18 In any jury trial, there are in effect two judges. I
19 am one of the judges, the other is the jury. It is my duty to
20 preside over the trial and to decide what evidence is proper for
21 your consideration. It is also my duty at the end of the trial
22 to explain to you the rules of law that you must follow and
23 apply in arriving at your verdict.

24 First, I will give you some general instructions which
25 apply in every case, for example, instructions about the burden

1 of proof and how to judge the believability of witnesses. Then
2 I will give you some specific rules of law about this particular
3 case. And finally, I will explain to you the procedures you
4 should follow in your deliberations.

5 You as jurors are the judges of the facts, but in
6 determining what actually happened, that is in reaching your
7 decision as to the facts, it is your sworn duty to follow all of
8 the rules of law as I explain them to you.

9 You have no right to disregard or give special
10 attention to any one instruction or to question the wisdom or
11 correctness of any rule I may state to you.

12 You must not substitute or follow your own notion or
13 opinion as to what the law is or ought to be. It is your duty
14 to apply the law as I explain it to you regardless of the
15 consequences.

16 It is also your duty base your verdict solely upon the
17 evidence without prejudice or sympathy. That was a promise you
18 made and the oath you took before being accepted by the parties
19 as jurors and they have the right to expect nothing less.

20 The superseding indictment or formal charge against
21 the defendant is not evidence of guilt. Indeed the defendant is
22 presumed by the law to be innocent. The defendant begins with a
23 clean slate. The law does not require a defendant to prove his
24 innocence or produce any evidence at all.

25 The government has a burden of proving the defendant

1 guilty beyond a reasonable doubt, and if it fails to do so, you
2 must acquit the defendant. While the government's burden of
3 prove is a strict or heavy burden, it is not necessary that the
4 defendant's guilty be proved beyond all possible doubt. It is
5 only required that the government's proof exclude any reasonable
6 doubt concerning the defendant's guilt.

7 A reasonable doubt is doubt based upon reason and
8 commonsense after careful and impartial consideration of all of
9 the evidence in the case. Proof beyond a reasonable doubt
10 therefore is proof of such a convincing character that you would
11 be willing to rely and act upon it without hesitation in making
12 the most important decisions of your own affairs.

13 If a defendant is found guilty, it will be my duty
14 decide what the punishment will be. You should not be concerned
15 with the punishment in any way. It should not enter your
16 consideration or discussion.

17 As I told you earlier, it is your duty to determine
18 the facts. To do so, you must consider only the evidence
19 presented during the trial. Evidence is the sworn testimony of
20 the witnesses, including the stipulations and the exhibits. The
21 questions, statements, objections and arguments made by the
22 lawyers are not evidence. The function of the lawyers is to
23 point out those things that are most significant or most helpful
24 to their side of the case, and in so doing to call your
25 attention to certain facts or inferences that might otherwise

1 escape your notice. In the final analysis, however, it is your
2 own recollection an interpretation of the evidence that controls
3 in the case. What the lawyers say is not binding upon you.

4 During the trial I sustained objections to certain
5 questions and exhibits. You must disregard those questions and
6 exhibits entirely. Do not speculate as to what the witness
7 would have said if permitted to answer the question or as to the
8 contents of an exhibit. Also, certain testimony or other
9 evidence has been ordered removed from the record and you have
10 been instructed to disregard this evidence. Do not consider any
11 testimony or other evidence which has been removed from your
12 consideration in reaching your decision.

13 Your verdict must be based solely on the legally
14 admissible evidence and testimony. Also, do not assume from
15 anything I may have done or said during the trial that I have
16 any opinion concerning any of the issues in this case, except
17 for the instructions to you on the law, you should disregard
18 anything I may have said during the trial in arriving at your
19 verdict.

20 Certain charts and summaries have been received into
21 evidence. You should give them only such weight as you think
22 they deserve .

23 In considering the evidence, you are you permitted to
24 draw such reasonable inferences from the testimony and exhibits
25 as you feel are justified in the light of common experience. In

1 other words, you may make deductions and reach conclusions if
2 that reason and commonsense lead you to draw from the facts
3 which have been established by the evidence.

4 Do not be concerned about whether evidence is direct
5 evidence or circumstantial evidence. You should consider and
6 weigh all of the evidence that was presented to you.

7 Direct evidence is the testimony of one who asserts
8 actual knowledge of the facts such as an eye witness.
9 Circumstantial evidence is proof of a chain of events and
10 circumstances indicating that something is or is not a fact.

11 The law makes no distinction between the weight to be
12 given either direct or circumstantial evidence, but the law
13 requires that you, after weighing all of the evidence, whether
14 direct or circumstantial, be convinced of the guilt of the
15 defendant beyond a reasonable doubt before you can find him
16 guilty.

17 I remind you that it is your job to decide whether the
18 government has proved the guilt of the defendant beyond a
19 reasonable doubt. In doing so, you must consider all of the
20 evidence. This does not mean, however, that you must accept all
21 of the evidence as true or accurate.

22 You are the sole judges of the credibility or
23 believability of each witness and the weight to be given to the
24 witness' testimony. An important part of your job will be
25 making judgments about the testimony of the witnesses who

1 testified in this case. You should decide whether you believe
2 all, some, part or none of what each person has to say and how
3 important that testimony was.

4 In making that decision, I suggest that you ask
5 yourself a few questions. Did the witness impress you as
6 honest? Did the witness have any particular reason not to tell
7 the truth? Did the witness have a personal interest in the
8 outcome of the case? Did the witness have any relationship with
9 either the government or the defense? Did the witness seem to
10 have a good memory? Did the witness clearly see or hear the
11 things about which he testified? Did the witness have the
12 opportunity and ability to understand the questions clearly and
13 answer them directly? Did the witness' testimony differ from
14 the testimony of the other witnesses? These are a few of the
15 considerations that will help you determine the accuracy of what
16 each witness said. Your job is to think about the testimony of
17 each witness you have heard and decide how much you believe of
18 what each witness had to say.

19 In making up your mind in reaching a verdict, do not
20 make any decisions simply because there were more witnesses on
21 one side than on the other. Do not reach a conclusion on a
22 particular point just because there were more witnesses --

23 There's a dash here that needs to come out on the
24 charge, which I'll take out. Any objection?

25 MS. KANOF: No, objection.

1 MR. HANSHEW: No, objection.

2 THE COURT: All right.

3 -- there were more witnesses testifying from one side
4 on that point.

5 You will always bear in mind that the law never
6 imposes upon a defendant in a criminal case, the burden or duty
7 of calling any witnesses or producing any evidence.

8 The testimony of one who provides evidence against the
9 defendant for personal advantage or vindication must always be
10 examined and weighed by the jury with greater care and caution
11 than the testimony of ordinary witnesses. You, the jury, must
12 decide whether the witness' testimony has been effected by these
13 circumstances, by the witness' interest in the outcome of the
14 case, by prejudice against the defendant or by the relationship
15 that the witness has with the prosecutors. You should keep in
16 mind that such testimony is always to be received with caution
17 and weighed with great care.

18 You should never convict any defendant upon the
19 unsupported testimony of such a witness, unless you believe that
20 testimony beyond a reasonable doubt.

21 The testimony of a witness may be discredited but
22 showing that the witness testified falsely or by evidence that
23 at some other time, the witness said or did something or failed
24 to say or do something which is inconsistent --

25 There's another dash there that needs to come out in

1 the final version.

2 THE COURT: Any objection, Mr. Hanshaw?

3 MR. HANSHEW: No, Your Honor.

4 THE COURT: Ms. Kanof?

5 MS. KANOF: No, Your Honor.

6 THE COURT: -- which is inconsistent with the
7 testimony the witness gave at this trial.

8 Earlier statements of a witness were not admitted in
9 evidence to prove that the contents of such statements are true.
10 You may not consider the earlier statements to prove that the
11 content of an earlier statement is true. You may only use
12 earlier statements to determine --

13 There's another dash there that needs to come out.
14 Any objection?

15 MR. HANSHEW: No, objection.

16 MS. KANOF: No, objection.

17 THE COURT: -- whether you think the earlier
18 statements are consistent or inconsistent with the trial
19 testimony of the witness and therefore whether they affect the
20 credibility of that witness.

21 If you believe that a witness has been discredited in
22 this manner, it is your exclusive right to give the testimony of
23 that witness whatever weight you think it deserves.

24 A superseding indictment charges under various counts
25 that the offense was committed on or about a specified date.

1 The government does not have to prove that the crimes were
2 committed on those exact dates, so long as the government proves
3 beyond a reasonable doubt that Mr. Delgado committed the crimes
4 on dates reasonably near the date stated in the superseding
5 indictment.

6 The word "knowingly," as that term has been used from
7 time to time in these instructions, means that the act was done
8 voluntarily and intentionally, not because of a mistake or
9 accident.

10 The intent of a person or the knowledge that a person
11 possesses at any given time may not ordinarily be proved
12 directly, because there is no way of directly scrutinizing the
13 workings of the human mind.

14 In determining the issue of what a person knew or what
15 a person intended at a particular time, you may consider any
16 statements made or acts done or omitted by that person and all
17 other facts and circumstances received in evidence which may aid
18 in your determination of that person's knowledge or intent.

19 You may infer, but you are certainly not required to
20 infer that a person intends the natural and probable
21 consequences of acts knowingly done or knowingly omitted. It is
22 entirely up to you, however, to decide what facts to find from
23 the evidence received during this trial.

24 You are here to decide whether the government has
25 proved beyond a reasonable doubt that the defendant is guilty of

1 the crime charged. The defendant is not on trial for any act,
2 conduct or offense not alleged in the superseding indictment.
3 Neither are you called upon to return a verdict as to the guilt
4 of any other person or persons not on trial as a defendant in
5 this case except as you are otherwise instructed.

6 A separate crime is charged in each count of the
7 superseding indictment. Each count and the evidence pertaining
8 to it should be considered separately.

9 The fact that you may find the defendant guilty or not
10 guilty as to one of the crimes charged should not control your
11 verdict as to any other.

12 Counts one through three of the superseding indictment
13 alleges offenses under Title 18 United States Code, Section
14 1343, which makes it a crime for anyone to use interstate or
15 foreign wire communications in carrying out a scheme to defraud.

16 For you to find the defendant Mr. Delgado guilty as to
17 any one of the three counts, you must be convinced that the
18 government has proved each of the following four elements beyond
19 a reasonable doubt for that count.

20 First, that Mr. Delgado knowingly devised or intended
21 to devise a scheme to defraud as described in paragraphs 1
22 through 12, on pages numbers 3 through 5 of the superseding
23 indictment, that is:

24 On or about September 16th, 2009, the defendant, Marco
25 Antonio Delgado, doing business as a law firm Delgado and

1 Associates P.C., entered into an agreement with F.G.G. entitled
2 memorandum of understanding, which acknowledged that D. and A.
3 Have assisted F.G.G. in procuring the right to bid for the award
4 of a contract with C.F.E. to provide power generating equipment
5 and maintenance for the equipment for the Agua Prieta II
6 project, and stipulated that should F.G.G. be awarded the
7 contract, D. and A. would be compensated for its involvement.

8 Two: Pursuant to the memorandum of understanding, the
9 defendant, Marco Antonio Delgado, agreed in part to prepare and
10 submit the bid to C.F.E. on behalf of F.G.G. In exchange, the
11 defendant, Marco Antonio Delgado, was to be paid 62.5 percent of
12 the difference between the purchase price to F.G.G. of all of
13 the equipment, transportation and field services required to
14 satisfy the bid requirements and the amount for which the
15 equipment was ultimately sold to C.F.E. plus other expenses.

16 Three: In the memorandum of understanding, the
17 defendant, Marco Antonio Delgado, and F.G.G. agreed that the
18 estimated sales price of the equipment to C.F.E. would be
19 \$127 million, that the current negotiated price for the
20 equipment was \$105 million and that the price for the field
21 services was \$4,200,000 and the that the cost of transportation
22 was undetermined.

23 Four: In or about October 2009, the defendant, Marco
24 Antonio Delgado, as a representative of F.G.G., submitted the
25 bid for the Agua Prieta II project, which offered the costs of

1 the equipment at \$121 million and the cost of services and
2 maintenance at \$121,000,107 as part of the bid.

3 F.G.G. represented that if C.F.E. were to award the
4 contract to F.G.G., F.G.G. would obtain letters of credit in the
5 amount of \$20 million to guarantee F.G.G.'s fulfillment of its
6 obligations under the Agua Prieta II project contract.

7 Five: On or about November 19th, 2009, C.F.E. awarded
8 the Agua Prieta II project contract to F.G.G., the power
9 generating equipment to be sold through F.G.G. to C.F.E. was
10 comprised of two natural gas turbo generators and one steam
11 turbo generator, both owned and warehoused by Mitsubishi Power
12 Systems America, Inc., M.P.S.A.

13 Six: On or about March 3, 2010, the defendant, Marco
14 Antonio Delgado, without the knowledge and consent of F.G.G.,
15 the sole owner and managing member of F.G.G., delivered to
16 C.F.E. written instructions redirecting --

17 There's a dash there that we need to take out.

18 Mr. Hanshaw?

19 MR. HANSHEW: No objection, Your Honor.

20 THE COURT: Or maybe not.

21 Ms. Kanof?

22 MS. KANOF: No objection.

23 THE COURT: -- the deposits of payments to be made to
24 F.G.G. by C.F.E. for the Agua Prieta II project into an account
25 at the First Caribbean International Bank in the Turks & Caicos

1 Islands, which account was under the control of Marco Antonio
2 Delgado instead of the F.G.G. Wells Fargo account stipulated in
3 the contract between F.G.G. and C.F.E. for the Agua Prieta II
4 project, which account was under the control of F.J.G.

5 Is that a typo? F.J.G.?

6 MS. KANOF: It's a type.

7 THE COURT: It should be F.G.G.

8 Mr. Hanshew?

9 MS. KANOF: I'm sorry, Your Honor. It's not a typo.

10 MR. HANSHEW: It's Gireud.

11 MS. KANOF: It's his name.

12 THE COURT: So then the defendant, Marco Antonio
13 Delgado, lied to F.J.G. concerning the change in location for
14 the deposits from C.F.E., by claiming that C.F.E. made the
15 decision to change the bank account to a bank in the Turks &
16 Caicos Islands instead of the F.G.G. bank account in El Paso,
17 Texas.

18 Number eight: The defendant, Marco Antonio Delgado,
19 intended to use, and to use and did use the money that had been
20 fraudulently deposited into the First Caribbean International
21 bank account in the Turks & Caicos Island, which account was
22 controlled by defendant, Marco Antonio Delgado, for his personal
23 enrichment.

24 Nine: In order to transfer some of the funds from the
25 First Caribbean International bank account to himself, the

1 defendant, Marco Antonio Delgado, caused his accountant to open
2 a new bank account in El Paso, Texas, in his or her name rather
3 than in the defendant's name.

4 Ten: On or about January 10th, 2010, the defendant,
5 Marco Antonio Delgado, wrote and transmitted a fraudulent and
6 fictitious letter to C.F.E., which letter the defendant
7 purported to be from an M.P.S.A. vice president of new projects
8 to F.G.G. as president of F.G.G. and in which the defendant
9 falsely reported that M.P.S.A. had reviewed the desirability of
10 pledging its equipment instead of posting an L.C., letter of
11 credit, as discussed. And the defendant apparently forged the
12 signature and letterhead of said M.P.S.A. official when the
13 defendant, Marco Antonio Delgado, knew that on December 28th,
14 2009, M.P.S.A. sent a letter to F.G.G. expressly prohibiting
15 F.G.G. from using M.P.S.A.-owned equipment as collateral to
16 fulfill F.G.G.'s obligation to provide letters of credit to
17 C.F.E.

18 Number 11: Despite the fact that M.P.S.A. told F.G.G.
19 and the defendant, Marco Antonio Delgado, that was unacceptable
20 to use M.P.S.A. equipment as collateral, despite the fact that
21 F.G.G. contractually agreed to provide letters of credit to
22 C.F.E., the defendant, Marco Antonio Delgado, did in fact pledge
23 the M.P.S.A. equipment as collateral to fulfill that term of the
24 F.G.G. contract with C.F.E., so that C.F.E. would begin to
25 transfer funds to F.G.G. pursuant to the defendant's new

1 instructions for the routing.

2 Twelve: To facilitate the success of the C.F.E.
3 contract with F.G.G., the defendant, Marco Antonio Delgado,
4 never informed M.P.S.A. that he had pledged their equipment as
5 collateral.

6 Second, the scheme to defraud employed false material
7 representations, false material pretenses or false material
8 promises.

9 Third, that for the purpose of executing such a
10 scheme, Mr. Delgado transmitted or caused to be transmitted by
11 means of wire communications in interstate or foreign commerce,
12 a writing, sign, signal, picture or sound, to wit, the
13 communication listed in the appropriate count of the superseding
14 indictment, that is:

15 For Count One, that for the purpose of executing such
16 a scheme on March 8th, 2010, Mr. Delgado transmitted or caused
17 to be transmitted by means of wire communications in interstate
18 or foreign commerce, a wire transfer of funds in the amount of
19 approximately \$20 million from a bank account in the Republic of
20 Mexico to a bank in the Turks & Caicos islands;

21 For Count Two, that for the purpose of executing such
22 a scheme on July 6th, 2010, Mr. Delgado transmitted or caused to
23 be transmitted by means of wire communications in interstate or
24 foreign commerce, a wire transfer of funds in the amount of
25 approximately \$12 million, from a bank account in the Republic

1 of Mexico to a bank in the Turks & Caicos Islands;

2 For Count Three, that for the purpose of executing
3 such a scheme on February 11th, 2010, Mr. Delgado transmitted or
4 caused to be transmitted by means of wire communications in
5 interstate or foreign commerce, an e-mail containing a letter
6 from F.J.G., as president of F.G.G., to an M.P.S.A. vice
7 president of new projects, stating that M.P.S.A. will not be
8 responsible for any letter of credit despite Mr. Delgado having
9 already caused M.P.S.A.'s equipment to be pledged as collateral
10 in order to fulfill F.G.G.'s obligation to provide letters of
11 credit to C.F.E.

12 Fourth, that Mr. Delgado acted with a specific intent
13 to defraud.

14 Now, I will give you more detailed instructions on
15 some of these elements of proof in terms:

16 The word "knowingly" means that the act was done
17 voluntarily and intentionally, not because of mistake or an
18 accident.

19 A "scheme to defraud" means any plan, pattern or
20 course of action intended to deprive another of money or
21 property.

22 A "specific intent to defraud" means a conscious
23 knowing intent to deceive or cheat someone.

24 A representation, pretense or promise is false if it
25 is known to be untrue or is made with reckless indifference as

1 to its truth or falsity. A representation, pretense or promise
2 would also be false if it constitutes a half truth or
3 effectively omits or conceals a material fact provided it is
4 made with the intent to defraud.

5 A representation, pretense or promise is material if
6 it has a natural tendency to influence or is capable of
7 influencing the decision of the person or entity to which it is
8 addressed.

9 It is not necessary that the government prove all of
10 the details alleged in the superseding indictment concerning the
11 precise nature and purpose of the scheme. What must be proven
12 beyond a reasonable doubt is that the defendant knowingly
13 devised or intended to devise a scheme to defraud by means of
14 false or fraudulent pretenses, representations or promises that
15 was substantially the same as the one alleged in the superseding
16 indictment.

17 It is also not necessary that the government prove
18 that the material transmitted by wire communications was itself
19 false or fraudulent or that the use of interstate or foreign
20 wire communication facilities was intended as a specific or
21 exclusive means of accomplishing the alleged fraud.

22 What must be proven beyond a reasonable doubt is that
23 the use of the interstate or foreign wire communication
24 facilities was closely related to the scheme, because the
25 defendant either wired something or caused it to be wired in

1 interstate or foreign commerce in an attempt to execute or carry
2 out the scheme.

3 The alleged scheme need not actually succeed in
4 defrauding anyone. To cause interstate or foreign wire
5 communication facilities to be used is to do an act with
6 knowledge that the use of the wire communications facilities
7 will follow in the ordinary course of business where such use
8 can reasonably be foreseen.

9 E-mails and wire transfers of funds constitute
10 transmissions by means of wire communication. Each separate use
11 of the interstate or foreign wire communications facilities in
12 furtherance of a scheme to defraud by means of false pretenses,
13 representations or promises, constitutes a separate offense.

14 The term "interstate commerce" means commerce or
15 travel between one state, territory or possession of the United
16 States and another state, territory or possession of the United
17 States, including the District of Columbia.

18 The term "foreign commerce" means commerce or travel
19 between any part of the United States, including its territorial
20 waters and any other country including its territorial waters.

21 The term "commerce" includes travel, trade,
22 transportation and communication.

23 Counts Four through Ten of the superseding indictment
24 allege offenses under Title 18 United States Code, Section
25 1956(a)(2)(B) little (i), which makes it a crime for anyone to

1 transmit or transfer or attempt to transfer or transfer funds to
2 a place in the United States from or through a place outside the
3 United States, knowing that funds involved represented the
4 proceeds of some form of illegal activity and that such
5 transmission or transfer is designed in whole or in part to
6 conceal or disguise the nature, location, source, ownership or
7 control of the proceeds of the specified unlawful activity.

8 For you to find Mr. Delgado guilty of this crime as to
9 any of the seven counts, you must be convinced that the
10 government has proved each of the following beyond a reasonable
11 doubt for that count.

12 First, that Mr. Delgado knowingly transmitted or
13 transferred or attempted to transmit or transfer funds to a
14 place in the United States from or through a place outside the
15 United States as described in the superseding indictment for the
16 appropriate count, that is:

17 For Count Four, that on or about October 26th, 2010,
18 Mr. Delgado knowingly transmitted or transferred or attempted to
19 transmit or transfer funds in the amount of approximately
20 \$150,000 from an account in the Turks & Caicos Island to an
21 account in El Paso, Texas.

22 For Count Five, that on or about December 15th, 2010,
23 Mr. Delgado knowingly transmitted or transferred or attempted to
24 transmit or transfer funds in the amount of approximately
25 \$100,000 from an account in the Turks & Caicos Island to an

1 account in El Paso, Texas.

2 For Counts six, that on or about February 1sr, 2011,
3 Mr. Delgado knowingly transmitted or transferred or attempted to
4 transmit or transfer, funds in the amount of approximately
5 \$70,000 from an account in the Turks & Caicos Island to an
6 account in El Paso, Texas.

7 For Counts Seven, that on or about February 23rd,
8 2011, Mr. Delgado knowingly transmitted or transferred or
9 attempted to transmit or transfer funds in the amount of
10 \$150,000 from an account in the Turks & Caicos Island to an
11 account in El Paso, Texas.

12 For Count Eight, on or about April 7th, 2011,
13 Mr. Delgado knowingly transmitted or transferred or attempted to
14 transmit or transfer funds in the amount of approximately
15 \$75,000 from an account in the Turks & Caicos Island to an
16 account in El Paso, Texas.

17 For Count Nine, that on or about May 25th, 2011,
18 Mr. Delgado knowingly transmitted or transferred or attempted to
19 transmit or transfer funds in the amount of approximately
20 \$50,000 from an account in the Turks & Caicos Island to an
21 account in El Paso, Texas.

22 And for Count Ten, that on or about June 27th, 2011,
23 Mr. Delgado knowingly transmitted or transferred or attempted to
24 transmit or transfer funds in the amount of approximately
25 \$50,000 from an account in the Turks & Caicos Island to an

1 account in El Paso, Texas.

2 Second, that Mr. Delgado did so knowing that the funds
3 involved in the transmissions or transfers represented the
4 proceeds of some form of unlawful activity.

5 And third, that Mr. Delgado knew that the transmission
6 or transfer was designed in whole or in part to conceal or
7 disguise the nature, location, source, ownership or control of
8 the proceeds of specified unlawful activity, namely wire fraud.

9 Now I give you more detailed instructions on some of
10 these elements of proof and terms.

11 With respect to the first element to transmit or
12 transfer includes sending electronic transfer by wire or
13 computer or other means.

14 With respect to the second element, the government
15 must prove that Mr. Delgado knew that the funds involved in the
16 transmission or transfer were the proceeds of some kind of
17 crime, that is a felony under federal state or foreign law,
18 although it is not necessary to show that the defendant knew
19 exactly what crime generated the funds.

20 I instruct you that wire fraud is a felony. With
21 respect to the third element, the government must show that in
22 fact the funds involved in the transmission or transfer were the
23 proceeds of wire fraud. I instruct you that wire fraud is a
24 specified unlawful activity under the statute.

25 Further, with respect to the third element, the

1 government must prove that Mr. Delgado knew that one of the
2 intended purposes of the transmission or transfer was to conceal
3 or disguise the nature, location, source, ownership or control
4 of the proceeds. Proof that the transmission or transfer had
5 merely the effect of concealing the proceeds is insufficient.
6 Similarly, proof that Mr. Delgado transmitted the proceeds and
7 used them is insufficient. Rather, the government must prove
8 that at least one of the purposes of the transmission or
9 transfer was to conceal the nature, location, source, ownership
10 or control of those proceeds.

11 The term "proceeds" means any property derived from or
12 obtained or retained directly or indirectly through some form of
13 unlawful activity, including the gross receipts of such
14 activity.

15 The term "knowingly" has the same meaning as provided
16 previously.

17 Counts 11 through 19 of the superseding indictment
18 allege offenses under Title 18 United States Code, Section 1957,
19 which makes it a crime for a person to knowingly engage in or
20 attempt to engage in a monetary transaction involving criminally
21 derived property in excess of \$10,000 that is derived from a
22 specified criminal activity.

23 For you to find Mr. Delgado guilty of this crime for
24 any of the nine counts, you must be convinced that the
25 government has proved each of the following beyond a reasonable

1 doubt for that count.

2 First, that Mr. Delgado knowingly engaged or attempted
3 to engage in the monetary transaction described in the
4 superseding indictment for the appropriate count. That is:

5 For Count Eleven, transfer on or about May 19th, 2010,
6 of approximately three \$375,000 from an account in the Turks &
7 Caicos Island to a Wells Fargo account in the United States.

8 For Count Twelve, transfer on or about July 14th of
9 2010, of approximately \$200,000 from an account in the Turks &
10 Caicos Island to a Mellon bank account in the United States.

11 For Count Thirteen, transfer on or about August 26th,
12 2010, of approximately \$70,000 from an account in the Turks &
13 Caicos Island to a Bank of the West account in the United
14 States.

15 For Count Fourteen, transfer on or about
16 December 10th, 2010, of approximately \$200,000 from an account
17 in the Turks & Caicos Island to a Bank of the West account in
18 the United States.

19 For Count Fifteen, transfer on or about March 17th,
20 2011, of approximately \$152,000 from an account in the Turks &
21 Caicos Island to a Centinel Bank of Taos account in the United
22 States.

23 For Count Sixteen, transfer on or about June 2nd of
24 2011 of approximately \$40,000 from an account in the Turks &
25 Caicos Island to a Bank of the West account in the United

1 States.

2 For Count Seventeen, transfer on or about January 5th,
3 2012 of approximately \$59,151.27 from an account in the Turks &
4 Caicos Island to a Compass bank account in the United States.

5 For Count Eighteen, transfer on or about March 30th,
6 2012 of approximately \$46,655 from an account in the Turks &
7 Caicos Island to a West Star bank account in the United States.

8 For Count Nineteen, transfer on or about
9 September 27th, 2012, of approximately \$150,000 from an account
10 in the Turks & Caicos Island to a Wells Fargo account in
11 El Paso, Texas.

12 Second that the monetary transaction was of a value
13 greater than \$10,000.

14 And third, that the monetary transaction involved
15 criminally derived property.

16 Fourth, that the criminally derived property was
17 derived from specified unlawful activity, namely wire fraud.

18 Fifth, that Mr. Delgado knew that the monetary
19 transaction involved criminally derived property.

20 And sixth, that the monetary transaction took place
21 within the United States.

22 Now, I will give you more detailed instructions on
23 some of these elements of proof and terms.

24 The term "monetary transaction" means the deposit,
25 withdraw, transfer or exchange in or affecting interstate or

1 foreign commerce of funds or a monetary instrument by, through
2 or to a financial institution.

3 The terms knowingly, commerce, interstate commerce and
4 foreign commerce have the same meaning as provided previously.

5 The term financial institution includes an insured
6 bank, a commercial bank, any foreign bank, a trust company, any
7 credit union, a loan or finance company, a business engaged in
8 vehicle sales, a licensed sender of money or any other person
9 who engages in the business of transmission of funds and the
10 person involved in real estate closings and settlements.

11 The term criminally derived property, means any
12 property constituting or derived from proceeds obtained from a
13 criminal offense. The government is not required to prove that
14 the defendant knew that the offense from which the criminally
15 derived property was derived -- constituted specified unlawful
16 activity as defined by the statute creating this offense. The
17 government must prove, however, that the defendant knew the
18 involved property was obtained or derived from the commission of
19 a crime. I instruct you that wire fraud is a federal crime and
20 is specified an unlawful activity.

21 To reach a verdict whether it is guilty or not guilty,
22 all of you must agree. Your verdict must be unanimous on each
23 count of the superseding indictment. Your deliberations will be
24 secret. You will never have to explain your verdict to anyone.
25 It is your duty to consult with one another and to deliberate in

1 an effort to reach an agreement if you can do so. Each of you
2 must decide the case for yourself, but only after an impartial
3 consideration of the evidence with your fellow jurors. During
4 your deliberations, do not hesitate to reexamine your own
5 opinions and change your mind if convinced that you were wrong.
6 But do not give up your honest beliefs as to the weight or
7 effect of the evidence solely because of the opinion of your
8 fellow jurors or for the mere purpose of returning a verdict.

9 Remember at all times, you are the judges, judges of
10 the facts. Your duty is to decide whether the government has
11 proved the defendant guilty beyond a reasonable doubt.

12 When you go to the jury room, the first thing that you
13 should do is select one of your number as foreperson, who will
14 help you guide your deliberations and will speak for you here in
15 the courtroom. A verdict form has been prepared for your
16 convenience. The foreperson will write the unanimous answer of
17 the jury in the space provided for each count of the superseding
18 indictment, either guilty or not guilty. At the conclusion of
19 your deliberations, the foreperson should date and sign the
20 verdict.

21 If you need to communicate with me during your
22 deliberations, the foreperson should write the message and give
23 it to the court security officer. I will either reply in
24 writing or bring you back into court to answer your message.
25 Bear in mind that you are never to reveal to any person, not

1 even to the Court, how the jury stands numerically or otherwise,
2 on any count of the superseding indictment until after you have
3 reached a unanimous verdict.

4 And it is signed by myself today, David Guaderrama,
5 United States District Judge.

6 Verdict Form Count One: As to the charge of wire
7 fraud involving wire transfer, on March 8th, 2010, of funds in
8 the amount of approximately \$20 million from a bank account in
9 the Republic of Mexico to a bank in the Turks & Caicos Island,
10 we the jury unanimously find Marco Antonio Delgado not guilty.

11 And there's a line for your answer or guilty and
12 there's a line for your answer.

13 Count Two: As to the charge of wire fraud involving
14 wire transfer, on July 6th, 2010, of funds in the amount of
15 approximately \$12 million from a bank account in the Republic of
16 Mexico to a bank in the Turks & Caicos Island, we the jury
17 unanimously find Marco Antonio Delgado not guilty.

18 There's a line for your verdict or guilty there's a
19 line for your verdict.

20 Count Three: As to the charge of wire fraud involving
21 e-mail, on February 11th, 2010, containing a letter from F.J.G.,
22 as president of F.G.G. to an M.P.S.A. vice president of new
23 projects, stating that M.P.S.A. will not be responsible for any
24 letter of credit, we the jury unanimously find Marco Delgado
25 guilty or guilt.

1 Count Four: As to the charge of money laundering
2 involving transmission or transfer, on or about October 26th,
3 2010, of funds in the amount of approximately one \$150,000 from
4 an account in the Turks & Caicos Island to an account in
5 El Paso, Texas, we the jury unanimously find Marco Antonio
6 Delgado not guilty or guilty.

7 Count Five: As to the charge of money laundering
8 involving transmission or transfer, on or about December 15th,
9 2010, of funds in the amount of approximately \$100,000 from an
10 account in the Turks & Caicos Island to an account in El Paso,
11 Texas, we the jury unanimously mind Marco Antonio Delgado guilty
12 or not guilty.

13 Count Six: As to the charge of money laundering
14 involving transmission or transfer, on or about February 1st of
15 2011, of funds in the amount of approximately \$70,000 from an
16 account in the Turks & Caicos Island to an account in El Paso,
17 Texas, we the jury unanimously find Marco Delgado not guilty or
18 guilty.

19 Count Seven: As to the count of money laundering
20 involving transmission or transfer, on or about February 23rd,
21 2011, of funds in the amount of approximately \$150,000 from an
22 account in the Turks & Caicos Island to an account in El Paso,
23 Texas, we the jury unanimously find Marco Antonio Delgado not
24 guilty or guilty.

25 Count Eight: As to the charge of money laundering

1 involving the transmission or transfer on or about April 7th,
2 2011, of funds in the amount of approximately \$75,000 from an
3 account in the Turks & Caicos Island to an account in El Paso,
4 Texas, we the jury unanimously find Marco Delgado not guilty or
5 guilty.

6 Count Nine: As to the charge of money laundering
7 involving transmission or transfer on or about May 25th, 2011,
8 of funds in the amount of approximately \$50,000 from an account
9 in the Turks & Caicos Island to an account in El Paso, Texas, we
10 the jury unanimously find Marco Antonio Delgado not guilty or
11 guilty.

12 Count Ten: As to the charge of money laundering
13 involving transmission or transfer on or about June 27th, 2011,
14 of funds in the amount of approximately \$50,000, from an account
15 in the Turks & Caicos Island to an account in El Paso, Texas, we
16 the jury unanimously find Marco Antonio Delgado not guilty or
17 guilty.

18 Count Eleven: As to the charge of engaging in
19 monetary transactions in property derived from specified
20 unlawful activity involving transfer on or about May 19th, 2010,
21 of approximately \$375,000 from an account in the Turks & Caicos
22 Island to a Wells Fargo account in the United States, we the
23 jury find Marco Delgado not guilty or guilty.

24 Count Twelve: As to the charge of engaging in
25 monetary transactions in property derived from specified

1 unlawful activity involving transfer on or about July 14th, 2010
2 of approximately \$200,000 from an account in the Turks & Caicos
3 Island to a Mellon bank account in the United States, we the
4 jury unanimously find Marco Antonio Delgado not guilty or
5 guilty.

6 Count Thirteen: As to the charge of engaging in
7 monetary transactions from property derived from specified
8 unlawful activity involving transfer on or about August 6th,
9 2010, of approximately \$70,000 from an account in the Turks &
10 Caicos Island to a Bank of the West in the United States, we the
11 jury find Marco Delgado not guilty or guilty.

12 Count Fourteen: As to the charge of engaging in
13 monetary transactions from property derived from specified
14 unlawful activity involving transfer on or about December 10,
15 2010, of approximately \$200,000 from an account in the Turks &
16 Caicos Island to a Bank of the West account in the United
17 States, we the jury unanimously find Marco Delgado not guilty or
18 guilty.

19 Count Fifteen: As the to charge of engaging in
20 monetary transactions in property derived from specified
21 unlawful activity involving transfer on or about March 17th of
22 2011 of approximately \$152,000 from an account in the Turks &
23 Caicos Island to a Centinel Bank of Taos account in the United
24 States, we the jury unanimously find Marco Antonio Delgado
25 guilty or not guilty.

1 Count Sixteen: As to the charge of engaging in
2 monetary transactions in property derived from specified
3 unlawful activity involving transfer on or about June 2nd, 2011,
4 of approximately \$40,000 from an account in the Turks & Caicos
5 Island to a Bank of the West account in the United States, we
6 the jury unanimously find Marco Antonio Delgado not guilty or
7 guilty.

8 Count Seventeen: As to the charge of engaging in
9 monetary transactions in property derived from specified
10 unlawful activity involving transfer on or about January 5th of
11 2012, of approximately \$59,151.27 from an account in the Turks &
12 Caicos Islands to a Compass bank account in the United States,
13 we the jury unanimously find Marco Antonio Delgado not guilty or
14 guilty.

15 Count Eighteen: As to the charge of engaging in
16 monetary transactions in property derived from specified
17 unlawful activity involving transfer on or about March 30th,
18 2012, of approximately \$46,655 in an account in the Turks &
19 Caicos Island to a West Star Bank account in the United States,
20 we the jury unanimously find Marco Antonio Delgado not guilty or
21 guilty.

22 Count Nineteen: As to the charge of engaging in
23 monetary transactions in property derived from specified
24 unlawful activity involving transfer on or about September 27th,
25 2012, of approximately \$150,000 in an account in the Turks &

1 Caicos Island to a Wells Fargo account in El Paso, Texas, we the
2 jury unanimously find Marco Antonio Delgado not guilty or
3 guilty.

4 And there's a space for the date when you return your
5 verdict and the signature line for the foreperson.

6 All right. Ladies and gentlemen of the jury, let's
7 take a short recess and we'll come back to begin the arguments.
8 We'll be in recess for ten minutes. Be back in the jury room at
9 5:04.

10 COURT SECURITY OFFICER: All rise.

11 (Jury recessed.)

12 THE COURT: On page 16 in Count Three, the way I read
13 it to the jury was: M.P.S.A. will not be responsible for any
14 letter of credit. The charge says "will not will." That's also
15 the indictment. It's tracking the indictment. But I don't
16 think it meant "will not will." I think it meant "will not" be
17 responsible that was M.P.S.A.'s letter saying they were not
18 going to be responsible for the letters of credit. Am I right?

19 MS. KANOF: I'm not sure I understand.

20 THE COURT: Look at page 16, Count Three, the 7th
21 line.

22 MS. KANOF: Oh, yeah. It's a typo "will not be."

23 THE COURT: I read it "will not." I didn't even read
24 the second "will."

25 MS. KANOF: Okay. But the indictment says Mitsubishi

1 "will not will."

2 THE COURT: The indictment says the same thing.

3 MS. KANOF: It's a typo in the indictment.

4 THE COURT: So what do we do now. I didn't read the
5 second "will."

6 MS. KANOF: We can amend a typographical indictment at
7 any time and remove.

8 THE COURT: And Mr. Hanshew, did you have any
9 objection?

10 MR. HANSHEW: Yeah, we'd object. Obviously, this jury
11 trial started. Amending at the close of evidence, we'd object
12 to that.

13 THE COURT: And I'll overrule the objection. I'm
14 going to, in the charge to the jury take out that second "will"
15 so that it tracks what I read, which was "will not" be
16 responsible.

17 MS. KANOF: Your Honor, it's not in the exhibit. It
18 was a typo in the indictment.

19 THE COURT: Mr. Hanshew has objected to that.

20 I'm letting you know the copy I'm going to present for
21 the jury will track what I read, Mr. Hanshew. I know you've
22 already objected to removing it from the indictment. Do you
23 object to the charge too?

24 MR. HANSHEW: Yes, Judge, same reason the indictment
25 says what it says, and that's what the government should have

1 their burden to, and it's a violation of due process at this
2 point to change it.

3 THE COURT: Thank you. That'll be overruled.

4 (Jury present.)

5 THE COURT: Let the record reflect that all members of
6 the jury are present, the United States through its assistant
7 United State's attorneys are present, the defendant and his
8 attorney is present. We'll now hear the closing arguments from
9 counsel. I remind you, what they say is not evidence. You
10 should not consider it to be evidence.

11 * * *

12 (Closing arguments Volume 16B of Volume 20.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /S/KATHLEEN A. SUPNET
Kathleen A. Supnet, CSR

December 31, 2018
Date

KATHLEEN A. SUPNET, CSR